

* * C O N F I D E N T I A L * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JENNIFER S. FISCHMAN,

Plaintiff,

-against-

Index No. 18-cv-08188

MITSUBISHI CHEMICAL HOLDINGS, AMERICA, INC.;
MITSUBISHI CHEMICAL CORPORATION; MITSUBISHI
CHEMICAL HOLDINGS CORPORATION; NICHOLAS OLIVA, in
his individual processional capacities; Donna
COSTA, in her individual and professional
capacities; and JOHN DOES 1-10, in their
individual and professional capacities,

Defendants.

-----X
July 30, 2021
11:05 a.m.

DEPOSITION of CHAD STALLER, a
Non-Party witness, taken by the attorneys for the
respective parties, pursuant to Notice, held at
the above time and place before Toni Musacchia, a
Stenotype Reporter and Notary Public within and
for the State of New York.

1 * * C O N F I D E N T I A L * *

2 A P P E A R A N C E S:

3 VALLI KANE & VAGNINI LLP
4 Attorneys for Plaintiff
5 600 Old Country Road
6 Garden City, New York 11530

7 BY: MATTHEW L. BERMAN, ESQ.

8

9 CLARICK GUERON REISBAUM LLP
10 Attorneys for Defendant, Donna Costa
11 220 Fifth Avenue, 14th Floor
12 New York, New York 10001

13 (NOT PRESENT)

14 GORDON REES SCULLY MANSUKHANI, LLP
15 Attorneys for Defendants, Mitsubishi
16 Chemical Holdings America, Inc., Donna Costa and
17 Nicholas Oliva
18 One Battery Park Plaza, 28th Floor
19 New York, New York 10004

20 BY: BRITTANY L. PRIMAVERA, ESQ.

21 SHEARMAN & STERLING, LLP
22 Attorneys for Defendant,
23 Mitsubishi Chemical Holdings Corporation
24 599 Lexington Avenue
25 New York, New York 10222

26 BY: JEROME FORTINSKY, ESQ.

27

28 ALSO PRESENT:

29 Jennifer Fischman

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1 * * C O N F I D E N T I A L * *

2 FEDERAL STIPULATIONS

3

4 IT IS HEREBY STIPULATED AND AGREED by and
5 between the parties hereto, through their
6 respective Counsel, that the certification,
7 sealing and filing of the within examination will
8 be and the same are hereby waived;

9

10 IT IS FURTHER STIPULATED AND AGREED that
11 all objections, except as to the form of the
12 question, will be reserved to the time of the
13 trial;

14

15 IT IS FURTHER STIPULATED AND AGREED that
16 the within examination may be signed before any
17 Notary Public with the same force and effect as
18 if signed and sworn to before this Court.

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1 * * C O N F I D E N T I A L * *

2 THE REPORTER: It is hereby stipulated
3 and agreed by and between counsel for all
4 parties present that pursuant to Federal
5 Rule of Civil Procedure 28 (a) (2), this
6 deposition is being conducted remotely and
7 that the court reporter shall be permitted
8 to administer the oath to the witness via
9 videoconference. The witness and all
10 counsel are in separate remote locations and
11 participating via Zoom, telephone or any web
12 conference meeting platform under the
13 control of Bee Reporting Agency, Inc.

14 It is further stipulated that this
15 videoconference will not be recorded in any
16 manner and that any recording without the
17 express written consent of all parties shall
18 be considered unauthorized, in violation of
19 law and shall not be used for any purpose in
20 this litigation or otherwise.

21 Before I swear in the witness, I will
22 ask each counsel to stipulate on the record
23 that I, Toni Musacchia, the court reporter,
24 may swear in the witness even though I am
25 not physically in the presence of the

1 * * C O N F I D E N T I A L * *

2 witness and that there is no objection to
3 that at this time, nor will there be an
4 objection at a future date.

5 MR. BERMAN: So stipulated.

6 MS. PRIMAVERA: So stipulated.

7 MR. FORTINSKY: So stipulated.

8 THE REPORTER: Ms. Primavera, can you
9 represent that to the best of your knowledge
10 and belief, that the witness appearing today
11 via web conference is, in fact, Mr. Chad
12 Staller?

13 MS. PRIMAVERA: Yes, I can represent
14 that.

15 C H A D S T A L L E R,

16 the witness herein, having first been duly
17 sworn by Toni Musacchia, a Notary Public in and
18 for the State of New York, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BERMAN:

22 Q. Please state your name for the record.

23 A. Chad Staller.

24 Q. Please state your address for the
25 record.

1 C. Staller - Confidential

2 A. 1608 Walnut Street, Suite 801,
3 Philadelphia, Pennsylvania 19103.

4 Q. Good morning, Mr. Staller, my name is
5 Matthew Berman, I am attorney representing
6 Jennifer Fischman in the lawsuit that you're
7 testifying on.

8 I would like to ask you a series of
9 questions, which you'll be answering having sworn
10 to tell the truth.

11 If you don't hear one of my questions, please
12 let me know and I will do my best to enunciate it
13 more loudly so that it is more understandable and
14 audible.

15 If you don't understand my question, please
16 let me know and I will do my best to rephrase the
17 question to make it more understandable.

18 If you do answer my question, I will take
19 that to mean that you understand the question.

20 As you know we have a court reporter here
21 today, she can only take down the testimony of
22 one of us at a time. So I would ask you to
23 please do your best to wait until I finish my
24 complete question before you begin to answer,
25 even if you anticipate what I am going to say.

1 C. Staller - Confidential
2 In return, I will do my very best to make sure
3 that I wait until you have completed your
4 response before I move on to the next question.
5 It's very important that one of us speak at a
6 time.

7 Also, as you know the court reporter can only
8 take down verbal responses so please do your best
9 to answer with a "yes" or "no" or some other
10 verbal response so that she can get that
11 recorded.

12 From time to time you may hear an objection
13 from one of the attorneys. In the case of such
14 an objection, I will still expect you to respond
15 to the question I pose unless you are
16 specifically instructed by counsel not to answer.

17 Do you understand that although we're not in
18 a formal courtroom setting today, you're still
19 under the same oath that you will be under in a
20 court of law?

21 A. I do, yes.

22 Q. Do you understand the rest of the
23 instruction I provided so far?

24 A. I understand the collective
25 instructions, yes.

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2 Q. During the course of today's testimony,
3 if at any time you wish to take a break, please
4 let me know and I will be happy to accommodate
5 any request for a break by any participant. I
6 just ask that you respond to the question before
7 we take that break.

8 In addition, the only instructions I have is,
9 to the extent possible, please do not respond to
10 any of my questions by providing privileged or
11 otherwise confidential information that you are
12 not supposed to be disclosing; is that okay?

13 A. That is.

14 Q. All right. Are you currently taking or
15 refraining from taking any medication which could
16 affect your ability to testify truthfully and
17 accurately today?

18 A. No.

19 Q. Do you have any medical condition which
20 might affect your ability testify truthfully and
21 accurately today?

22 A. No.

23 Q. Do you suffer from any medical condition
24 which impairs your memory?

25 A. I don't believe so.

1 C. Staller - Confidential

2 Q. You've been deposed before, correct?

3 A. Yes.

4 Q. And you testified at trial?

5 A. Yes.

6 Q. So in preparation for your deposition
7 today did you --

8 MR. BERMAN: Withdrawn.

9 Q. What activities, if any, did you engage
10 in order to prepare for today's deposition?

11 A. I got reacquainted with my file.

12 Reviewed my report in this matter and had a brief
13 conversation with Ms. Primavera yesterday.

14 Q. Without revealing substance of any
15 conversations, have you had any other
16 conversations with Ms. Primavera or anyone else
17 in preparation for today's testimony?

18 A. No.

19 Q. So you have prepared a report in this
20 matter, correct?

21 A. Yes.

22 Q. I am going to -- have you also provide
23 was your CV?

24 A. I believe so. I provided that to Ms.
25 Primavera and she sent it to you.

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2 MR. BERMAN: I'll ask the court reporter

3 to pull up an exhibit. It should be mark as

4 CV, underscore, Staller, underscore, pic.

5 Can we mark this as Staller Exhibit 1.

6 (Staller Exhibit 1, marked for

7 identification.)

8 MR. BERMAN: For identification, this is

9 a five-page PDF document. Labeled at the

10 top, Center for Forensic Economic Studies.

11 Underneath that, Chad Staller, J.D., M.B.A,

12 M.A.C., C.V.A.

13 Toni, can you slowly scroll through the

14 document so the witness can see how many

15 pages it has.

16 Q. Mr. Staller -- how should refer to you

17 today; is it correct to call you Mr. Staller or

18 should I be calling you something different?

19 A. Mr. Staller works.

20 Q. Mr. Staller, do you recognize this

21 document?

22 A. Yes, I do.

23 Q. Is this the CV that you provided in this

24 case?

25 A. It is.

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2 Q. Does this document reflect your
3 qualifications to provide expert testimony in
4 this matter?

5 A. Yes.

6 Q. Are there any other qualifications that
7 you have that pertain to your qualification in
8 this matter that are not contained within this
9 document?

10 A. No.

11 Q. Did you prepare an expert report in this
12 matter, sir?

13 A. Yes.

14 Q. Did anyone besides you author the expert
15 report?

16 A. My report is cosigned by my colleague,
17 fellow senior economist, Stephen Dripps. Stephen
18 is spelled with a P-H and Dripps is spelled
19 D-R-I-P-P-S.

20 Q. Do you know whether Mr. Dripps will be
21 presented as a testifying expert in this matter?

22 A. I imagine, God willing, I will be the
23 testifying expert.

24 Q. As far as you know, as of today,
25 Mr. Dripps has no intention to testify?

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2 A. True.

3 Q. Was there a particular portion of the
4 expert report that was prepared by Mr. Dripps?

5 A. Not a specific portion as a secondary
6 economist and co-signator. His role was in the
7 reviewing process. After the report was written,
8 review it for grammatical -- you know, typing
9 errors potentially. And then review my summary
10 of the spreadsheets that I prepared with regard
11 to the available jobs for Ms. Fischman and then
12 if the conclusions are consistent with what
13 Mr. Dripps and I discussed throughout the
14 development of my report, he's happy to co-sign
15 the report.

16 Q. Okay. So the substance of the report is
17 all derived from you, correct?

18 A. That's true, yes.

19 Q. So turning to your accreditation section
20 of your CV on the left panel --

21 A. Mr. Berman, the substance is coming from
22 various sources but the drafting -- the
23 preparation is coming from the --

24 Q. You're the drafter of the report,
25 correct?

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2 A. Yes.

3 Q. And Mr. Dripps reviewed your drafts?

4 A. Yes.

5 Q. Mr. Dripps did not draft any portion of
6 the report, did he?

7 A. Only in the editing capacity.

8 Q. Thank you for clarifying.

9 With respect to your accreditations on the
10 left-hand panel, are you a certified valuation
11 analyst?

12 A. Yes.

13 Q. Did you use any skills as a certified
14 analyst in preparation of the report?

15 A. No.

16 Q. Are you a certified instructor for
17 National Institute of Trial Advocacy?

18 A. Yes.

19 Q. Did you use any of your skills and
20 training as a certified instructor for the
21 National Institute of Trial Advocacy in
22 preparation of this report?

23 A. No.

24 Q. Turning to your education beneath that.
25 Do you see that portion where it's labeled

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2 education?

3 A. Yes.

4 Q. Are you a Master of Accountancy from
5 Villanova?

6 A. I received a Master's of Accountancy
7 from Villanova, yes.

8 Q. Did you use any of your Master of
9 Accountancy knowledge in preparation of the
10 report?

11 A. Within my Masters's program, there was
12 Master's levels labor economic classes. To the
13 extent that that background and training applied
14 to my specific examination in this case, my
15 training from that degree would have been used in
16 my drafting of the current report.

17 Q. You have an MBA from Temple University?

18 A. Yes.

19 Q. Did you use any of your MBA skills in
20 preparation of this report?

21 A. Yes.

22 Q. Which ones?

23 A. Throughout the course of my MBA program
24 which concentrated on economics, I took Master
25 level economic classes, including several labor

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2 economic classes. Based upon my training in that
3 program in labor economics, the extent I was
4 providing economic conclusions in this report of
5 the labor market that existed for Ms. Fischman,
6 that would relate to my background and training
7 that derived from that program.

8 Q. And you have a law degree from Temple
9 University's James E. Beasley School of Law?

10 A. Yes.

11 Q. Did you use any of that training in
12 preparation of this report?

13 A. Yes.

14 Q. Which training did you use from the
15 Beasley School of Law in the preparation of this
16 report?

17 A. Through that training I had the
18 opportunity to sit for and pass three different
19 state bar examinations. So I'm a member of three
20 bars in good standing. As a licensed attorney,
21 my background and training explicitly from Temple
22 University would relate to employment law,
23 background and information, employment law,
24 formal training in law school, that would have
25 given me some context in understanding of the

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2 claims being made by Ms. Fischman, the relevance
3 of my analysis and the scope of my analysis
4 that's presented in my report in this matter.

5 Q. What states are you licensed in?

6 A. New Jersey, the Commonwealth of
7 Pennsylvania and Maryland.

8 Q. Do you have to be licensed in New Jersey
9 to practice law in that state?

10 A. To my understanding, yes.

11 Q. Do you have to be licensed in
12 Pennsylvania to practice law in that state?

13 A. I believe so, yes.

14 Q. Do you have to be licensed to practice
15 law in Maryland in order to practice law in that
16 state?

17 A. Yes, with the exception of a pro hac
18 vice admission to any of those states.

19 Q. Turning to your awards and honor section
20 of your CV. Do any of these awards and honors
21 have any bearing on the substance of the report
22 you prepared in this matter?

23 THE WITNESS: Madam court reporter, can
24 you scroll down. I can't see that part of
25 the CV.

1 C. Staller - Confidential
2 A. I would say, yes, to the extent that
3 those awards are provided based upon my work in
4 the field as a forensic economist, I'm providing
5 forensic economic analysis in this matter. It
6 goes towards my experience in the industry and
7 the specific field.

8 Q. Are you currently employed?

9 A. Yes.

10 Q. Where are you presently employed?

11 A. I guess the where would be in
12 Philadelphia. The whom would be the Center for
13 Forensic Economic Studies.

14 Q. Can we refer to that today by the
15 acronym CFES?

16 A. CFES would be fine.

17 Q. What business is CFES in?

18 A. Our primary practice is concentrated on
19 the evaluation of economic damages related to
20 various types of lawsuits primarily in the field
21 of employment discrimination, personal injury and
22 wrongful death and commercial disputes.

23 Q. How many economists does CFES have?

24 A. In addition to myself, we have six
25 additional economists.

1 C. Staller - Confidential

2 Q. So you mentioned yourself and
3 Mr. Dripps, right?

4 A. Yes.

5 Q. Who are the other four?

6 A. That would be Brian Conley, Adam Gilham,
7 David Adams and Bernard Lex.

8 Q. So in connection with this matter, what
9 area is your expertise lying in?

10 A. Through the information I have to the
11 current date, labor economics.

12 Q. Any other areas of expertise that are
13 being applied to this matter?

14 A. I have not seen a report -- an economist
15 report prepared on behalf of Ms. Fischman. To
16 the extent such a report is prepared that may
17 outline backpay and front pay damages, I may be
18 requested to opine on those damages. But through
19 the information I have through the current date,
20 it would be limited to labor economics.

21 Q. I think you mentioned earlier, correct
22 me if I'm wrong, that you're a forensic
23 economist?

24 A. Yes.

25 Q. Are you applying any forensic economics

1 C. Staller - Confidential
2 to the report you prepared in this matter?
3 A. As I explained many times in courtrooms,
4 the term "forensic" in economics can become
5 confusing or misleading. The term "forensic"
6 simply means public forum. It comes from the
7 Latin word "forensis," so simply forensic
8 economics just means the application of economic
9 theory, research and thought into the public
10 forum, which as we all know to be the courthouse.
11 So I guess the broad work I do is forensic
12 economics as my economics analysis is applied
13 into legal matters that may get into the public
14 forum at the courthouse.

15 Q. For the purpose of the report that you
16 prepared, do you claim any expertise other than
17 in the field of labor economics?

18 A. No.

19 Q. How long have you been providing labor
20 economics expertise commercially?

21 A. Sixteen plus years.

22 Q. Do you know how many matters you have
23 been retained as an expert in over those past
24 sixteen years in connection with labor and
25 economics?

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2 A. Was your question labor and economics or
3 labor economics?

4 Q. Labor economics. How many cases have
5 you been retained as an expert on labor economics
6 over the past 16 years, if you know?

7 A. I can approximate -- as an
8 approximation, around thousand times.

9 Q. In all of those cases, were you working
10 pursuant to a retainer agreement?

11 A. I just couldn't -- in all those cases,
12 was I working under a retainer agreement?

13 Q. Yes.

14 A. I imagine so. Our office's typical
15 practice is to be formally retained and we have a
16 retainer agreement or the client may provide a
17 retainer agreement. So I would say in most of
18 those cases.

19 Q. In the cases you just described, were
20 they all through CFES?

21 A. Yes.

22 Q. Were any of them provided on a pro bono
23 basis?

24 A. Not to my recollection.

25 Q. It your understanding that CFES was

1 C. Staller - Confidential
2 compensated or worked for compensation in each of
3 those matters?

4 A. That's a compound question. Can you
5 just split it up?

6 Q. Is it your understanding that in the
7 matters that you testified in labor economics
8 over the past year, CFES was compensated for the
9 work?

10 A. Over the past year, yes -- I imagine so.
11 I don't know about our collection process but I
12 imagine -- over the last year, I don't recall a
13 pro bono matter in a labor economic case.

14 Q. So you don't perform this work for free,
15 correct?

16 A. No, our firm is for a profit business.

17 Q. In any of these labor economics cases
18 where you were initially hired as an expert, did
19 you ultimately decide you were unable to provide
20 testimony?

21 A. If it got to drafting a report and I
22 felt comfortable to and willing to provide
23 testimony as needed -- so I imagine it got to a
24 point where I reviewed materials that I felt
25 comfortable drafting a report and with the

1 C. Staller - Confidential
2 qualification the state or are jurisdiction
3 required a report, I felt comfortable doing that
4 and I felt comfortable providing testimony in
5 courthouse.

6 Q. Were there any labor economic
7 engagements that you accepted that you ultimately
8 were uncomfortable providing a report in?

9 A. No.

10 Q. Are you being compensated for your work
11 in this matter?

12 A. Yes.

13 Q. Are you compensated on an hourly rate?

14 A. The firm is, yes.

15 Q. What is the hourly rate that the firm is
16 compensated at for your work?

17 A. 335 an hour for report writing and
18 analysis. Testimony is billed at a half day rate
19 of 2,500 for deposition testimony or trial
20 testimony.

21 Q. Do you know Mr. Dripps' rate?

22 A. 335 an hour. Same trial or testimony
23 rates, 2,500 for a half day.

24 Q. Do you know how many hours you put into
25 this matter so far?

1 C. Staller - Confidential

2 A. I do not.

3 Q. You have prepared expert reports in a
4 number of cases, correct?

5 A. Yes.

6 Q. Approximately how many of those were
7 Federal cases?

8 A. In my overall practice I, had over 1,000
9 since 2005.

10 Q. Are you familiar with the Federal rules
11 of procedure covering disclosure of expert
12 testimony?

13 A. I'm familiar with Rule 26. I don't have
14 it committed to memory but generally familiar.

15 Q. Are you aware that Rule 26 requires
16 statement of the compensation to be paid for the
17 study and testimony in the case by the expert?

18 A. Yes.

19 Q. Have you provided that here?

20 A. As far as my hourly rate, yes. As far
21 as a statement of compensation, at the time of
22 preparing my report it wasn't totaled so I
23 couldn't provide a total billing to date.

24 Q. Did you provide any information
25 concerning the amount that you were being

1 C. Staller - Confidential

2 compensate in your expert report?

3 A. I believe so, yes.

4 MS. BERMAN: Toni, you can put the

5 exhibit away for a moment.

6 Toni, can you pull up in the exhibits

7 that you've been provided there's a document

8 called CFES report Fischman 11-13-20.PDF.

9 Let's mark this as Staller Exhibit 2.

10 (Staller Exhibit 2, marked for
11 identification.)

12 Q. Mr. Staller, do you see this document?

13 A. Yes.

14 Q. Do you see at bottom it says page 1 out
15 of 608?

16 A. No, it only goes to the top -- the first
17 page right now on the screen.

18 Q. On the screen --

19 A. I'm sorry, I do see that. Yes.

20 Q. Did you prepare 608 page expert report
21 in this matter?

22 A. With appendices, yes. So yes.

23 MR. BERMAN: Toni, can you allow the
24 witness to flip through the document to his
25 satisfaction and let me know when he's

1 C. Staller - Confidential

2 ready.

3 A. Yes, this is my report with the relevant

4 attachment relevant to Ms. Fischman.

5 Q. Can you please can you turn to page nine

6 of the document. Mr. Staller, did I hear you say

7 you recognize this document?

8 A. Yes.

9 Q. And it's your expert report in this

10 matter, correct?

11 A. Yes.

12 Q. Do you see the last line on the summary

13 there where it says, All relevant documents as

14 required by F.R.C.P.26(a) (2) (B) are attached

15 hereto as Appendix A"?

16 A. Yes.

17 Q. Is there an Appendix A in this document?

18 A. Scroll down. Unfortunately, my

19 assistant didn't include it before the

20 attachment. So that would be -- the CV we just

21 discussed -- the testimony list that I saw that

22 you do have and then the fee schedule that we

23 just discussed a couple moments ago, that's my

24 typical Appendix A.

25 MR. BERMAN: I don't think we received a

1 C. Staller - Confidential
2 fee schedule. I'll just call for production
3 of the fee schedule to the extent it hasn't
4 been previously provided.

5 We can set that issue aside.

6 Q. Is it correct to characterize the first
7 nine pages of this report as the body of the
8 report; is that fair?

9 A. Yes.

10 Q. What I would like to do is just turn to
11 the front of the report, the very first page.

12 Do you see the section that says "documents
13 relied upon"?

14 A. Yes.

15 Q. Does this contain a complete and
16 accurate list of materials that you were provided
17 in this matter?

18 A. So, I can't say provided. These are the
19 documents I used to formulate my opinions and
20 conclusions. Relied upon -- I'm sorry,
21 provided -- I believe that's additional documents
22 provided.

23 Q. Okay. But these are -- this is a
24 complete list of documents that you relied upon
25 in preparing this report, correct?

1 C. Staller - Confidential

2 A. Yes, that's true.

3 Q. If it's not on this list you didn't rely
4 upon it?

5 A. You'll see that there are some
6 additional documents used that are cited
7 throughout the report. But as far as fact
8 specific documents related to this particular
9 matter, these would be the case specific material
10 and then throughout the report you'll see
11 references to the forensic job sets and some
12 other economic data that's cited within my
13 report. But as far as case specific, it's in
14 Section I.

15 Q. Is it fair to say that if it's
16 referenced expressly in your report, you may have
17 relied upon?

18 A. Correct, either through Section I or
19 relevant footnotes.

20 Q. In contrast, is it fair to say that if
21 it's not referenced in your report, you didn't
22 rely upon?

23 MS. PRIMAVERA: Objection to form. You
24 can answer.

25 A. Correct, to form my opinions in this

1 C. Staller - Confidential

2 matter. Yes.

3 Q. Thank you. Were you provided with any
4 additional documents that you determined -- you
5 decided not to rely upon?

6 A. Let's see. I'm taking a look to see
7 what else I have in my file.

8 The only documents that I received that
9 is not in Section I would be the expert report of
10 Rona Wexler, R-O-N-A W-E-X-L-E-R.

11 Q. When did you receive the expert report
12 of Rona Wexler?

13 A. The first part of your question got
14 muffled.

15 Q. When did you receive the expert report
16 of Rona Wexler?

17 A. October of 2020.

18 Q. So it's your understanding that Ms.
19 Wexler had already drafted an expert report as of
20 October of 2020?

21 MS. PRIMAVERA: Objection to form.

22 Q. You were provided with -- you were
23 provided with Ms. Wexler's report in October of
24 2020, did I get that right?

25 A. Yes.

1 C. Staller - Confidential

2 Q. Was that a draft report?

3 A. (No verbal response.)

4 Q. Can you hear me?

5 A. Yes, I'm just looking.

6 Q. Okay.

7 A. Yes.

8 Q. Did you subsequently receive any other
9 reports from Rona Wexler?

10 A. I don't see a final version in my
11 system.

12 Q. The report that you provided to us in
13 this matter is your final report, correct?

14 A. Yes.

15 Q. Was there any drafts?

16 A. I don't have any, no.

17 Q. Did you prepare any drafts of your
18 report before getting to the final version?

19 A. The only version I have is my
20 November 13th report. So as far as drafts, I
21 don't have any saved. As far as the preparation
22 of it, I don't recall.

23 Q. Did you provide any drafts of your
24 report to anyone prior to issuing your final
25 report in this matter?

1 C. Staller - Confidential

2 A. I don't know because the only version I
3 have is the current version and I don't have
4 anything that has a prior date stamp.

5 Q. Can you tell me when you first began
6 drafting your expert report in this matter?

7 A. No, I have to go back to look at the
8 billing records.

9 Q. Do you know when you were retained in
10 this matter?

11 A. When I was what?

12 Q. Retained?

13 A. There's a retention agreement. I have
14 to go back look at retention agreement.

15 Q. Do you know when you were assigned to
16 work on this matter?

17 A. No.

18 Q. Did you receive the draft of Ms.
19 Wexler's report before you began drafting your
20 report?

21 A. I have to go back and look at my billing
22 records.

23 Q. Did you provide Ms. Wexler with any
24 drafts of your report?

25 A. I don't believe so -- no.

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2 Q. Prior to providing your November 13,
3 2020 report, did you provide any drafts to your
4 counsel or your client's counsel?

5 A. I don't recall.

6 Q. Did you receive any feedback from the
7 attorneys that hired CFES concerning drafts of
8 your expert report?

9 MS. PRIMAVERA: Objection. You can
10 answer.

11 A. I don't recall.

12 Q. What were you asked to do in this case?

13 MS. PRIMAVERA: Objection.

14 Q. What was the scope of work you were
15 asked to perform in this case?

16 A. Based upon Ms. Fischman's separation
17 from employment with the defendant, evaluate the
18 labor market that existed subsequent to her
19 separation and identify relevant and potential
20 employment opportunities that Ms. Fischman could
21 have pursued and compare that to the documented
22 and provided information of her efforts to find
23 subsequent employment post her separation.

24 MR. BERMAN: Toni, can you read back the
25 last part of that response where he said

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2 "and compare that to."

3 (Whereupon, requested portion of

4 testimony read back.)

5 Q. Were you asked to make any assumptions
6 in the preparation of your report?

7 MS. PRIMAVERA: Objection.

8 A. No.

9 Q. Did you make any assumptions in the
10 preparation of your report?

11 A. I don't think I did, no.

12 Q. Is serving as an expert witness a
13 material part of your work for CFES?

14 MS. PRIMAVERA: Objection.

15 Q. You can answer.

16 A. So I'm confused by the question of the
17 term "material" and I'm confused with how you're
18 using it as an expert witness. So can you
19 restate the question, please.

20 Q. Sure. What portion of your work for
21 CFES involves serving as an expert?

22 A. When you're using the term "serving as
23 an expert," is that testifying or just being
24 retained as an expert that would draft a report
25 and provide analysis?

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2 Q. The second of those two choices.

3 A. Okay. I would approximate 65 to
4 75 percent of my time would be serving as an
5 expert for my time with CFES, which would be
6 defined as working with clients and developing
7 economic models.

8 Q. Is that is that work you just described
9 in connection with litigation?

10 A. That approximation percentage would be,
11 yes.

12 Q. So of the remaining portion of your
13 work, what is that comprised of?

14 A. Non-litigation work and then some
15 administrative duties. I serve as the firm's
16 president.

17 Q. Okay. So what proportion of your work
18 is spent doing administrative duties?

19 A. That would vary whether we're in a
20 pandemic or not. About 10 -- 10 to 15 percent of
21 the time.

22 Q. Okay. What proportion of your work
23 involves non-litigation duties?

24 A. So if we take 20 percent -- if I take
25 the upper end of my approximation of litigation

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2 time it was 70 percent and then I add 10 percent
3 for administrative duties, the balance would be
4 20 percent for non-litigation projects.

5 Q. What types of work make up your
6 non-litigation projects?

7 A. Business valuations, cost benefit
8 studies and union negotiations.

9 Q. Do you charge different rates for these
10 different types of work you perform?

11 A. Typically, most of those projects are
12 also billed at 335 an hour.

13 Q. Is working for CFES your full-time
14 occupation?

15 A. Yes.

16 Q. Have you created billing records which
17 correspond to all of the work that you performed
18 in this matter to date?

19 A. With the exception of preparing for
20 today's deposition and the deposition itself.

21 Other than that, yes.

22 Q. All right. So other than --

23 MS. BERMAN: Withdrawn.

24 Q. Do you recall earlier I asked you about
25 the scope of work for this assignment?

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2 A. Yes.

3 Q. Okay. So did I understand you correctly
4 that there were three components of the scope of
5 work -- and I'm just paraphrasing here --
6 evaluating the labor market after Ms. Fischman's
7 separation, that would be number one.

8 Number two, identifying relevant and
9 potential employment opportunities.

10 Number three, would be comparing those
11 potential employment opportunities to documented
12 and provided information concerning Ms.
13 Fischman's efforts to find post separation
14 employment; did I get that right?

15 A. Generally, yes.

16 Q. Were you asked to perform any other work
17 besides those three things that we just
18 identified?

19 MS. PRIMAVERA: Objection.

20 Q. You can answer the question.

21 A. So, just for the record, I wasn't asked
22 to do those three sections. I was asked to
23 provide an economic analysis of the labor market
24 and then develop my findings based upon the
25 review of the records I had provided in this

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2 case. So I just don't want the record to suggest
3 I was told what to do or to reach certain
4 conclusions. But here is the case, here is the
5 materials and can you provide an economic
6 analysis based upon that information.

7 Q. What were you asked to provide an
8 economic analysis of?

9 A. The labor market for lawyers, examine
10 her -- her being Ms. Fischman's job search
11 efforts subsequent to her separation -- compare
12 that to relevant economic labor and economic
13 information with regard to how the marketplace
14 looked for people similar to Ms. Fischman in
15 February of '17 and thereafter and see how her
16 efforts to find mitigating employment compared to
17 available jobs and the labor market.

18 Q. Okay. In connection with providing the
19 economic analysis you described, is that type of
20 economic analysis something that you have done
21 before?

22 A. Yes.

23 Q. How many times have you done that
24 before?

25 A. Similar to the analysis that I provided

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2 in this matter?

3 Q. Yes.

4 A. I would approximate of the roughly 1,000

5 we already discussed in the labor economic arena,

6 maybe half of those are similar to the analysis

7 that I provided here.

8 Q. Do I understand correctly you've done

9 approximately 500 analyses of this type?

10 A. By approximation, yes.

11 Q. Do each of those analyses look at the

12 same types of information that you just

13 described?

14 MS. PRIMAVERA: Objection.

15 A. No, that's a -- that's a generally

16 overbroad question. Each case is going to be

17 specific on it's own. I'm going to look at the

18 relevant materials in a specific case and then

19 pull relevant economic data to the task at hand.

20 Q. How many of your previous assignments

21 have involved examining the job search efforts of

22 the plaintiff?

23 A. Of those approximate 1,000 that we

24 already discussed, in that 500 ballpark -- again,

25 that's a loose approximation. I never really

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2 tallied it up.

3 Q. I just want to make sure I understand.

4 Are you -- do I understand correctly that you
5 you've done approximately 500 analyses of job
6 search efforts of a plaintiff?

7 A. If we're trying to go off of
8 approximations -- so earlier in our conversation
9 today we discussed that about roughly I've done
10 1,000 or so labor market or labor economic
11 studies -- those would be of various
12 examinations. Within that 1,000 population --
13 which is still an approximation -- because now
14 your more refined question is going towards how
15 many are looking at the job search efforts of the
16 plaintiff?

17 Q. Yes.

18 A. I couldn't give you -- I mean, in that
19 500 ballpark -- I'm hesitant to put that on the
20 record because I don't want to be guessing. I
21 don't know. I don't really tally -- after each
22 report, I don't have a little check sheet. I
23 don't know.

24 Q. Is it fair to say you looked at the job
25 search efforts of a plaintiff hundreds of times.

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2 A. Sure. North, greater than 100. I can
3 definitely say that, yes.

4 Q. Greater than 300?

5 A. I just don't want to misstate the record
6 so I can't tell you.

7 Q. Is there any way you would be able to
8 determine that information by resorting to your
9 records?

10 A. No, my database isn't kept by that type
11 of granular information. It's much broader
12 because my records I don't personally -- I don't
13 have a preference of what type of analysis I do.
14 I do what's requested in a specific case.

15 Q. Okay. Working with that same universe
16 of matters we just described -- you know, not
17 holding to you any specific number -- but you
18 said it's certainly more than 100. It could be
19 significantly higher than that; is that fair?

20 A. Right, it could be in the range of 100
21 to a 1,000.

22 Q. Well, I thought you said the most it can
23 be 500ish, did I get that wrong?

24 MS. PRIMAVERA: Objection.

25 A. So the universe we're talking about now

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2 in labor economics matter that I can give an
3 approximation to of preparing an analysis on
4 would be 1,000. I'm comfortable testifying on
5 the record that it be north of 100. I got
6 hesitant and I wanted to clarify that I can't say
7 anywhere between 500 so I can say it's between
8 100 to 1,000 and that's what I can testify to
9 under other.

10 Q. How many of those matters concern a job
11 search efforts of someone other than a plaintiff?

12 A. Someone other than a plaintiff?

13 Q. Yes.

14 A. None.

15 Q. How many of those analyses did you pair
16 that with labor economics information of the type
17 you described previously?

18 A. I imagine a majority of them.

19 Q. How many of those did you -- did your
20 pairing of job --

21 MS. BERMAN: Withdrawn.

22 Q. How many of those labor economics
23 studies did you consider the marketplace for
24 people similar to the plaintiff in your matter?

25 A. I imagine a majority of them. I don't

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2 have a firm statistic or percentage.

3 Q. How many of those assignments did you

4 make an assessment of the reasonableness of the

5 person's job search efforts?

6 A. I imagine a majority of them. I don't

7 know.

8 Q. How many of those matters did you make
9 an assessment of how long you would have expected
10 it to take for that person to find a comparable
11 position?

12 A. I imagine a majority of those reports.

13 Q. Okay. This covers a 16 year period; is
14 that correct?

15 A. I'm not sure what you're referring to
16 now.

17 Q. Well, of those 1,000 or so labor
18 economic matters you just described, does that
19 cover a 16 year period?

20 A. Yes.

21 Q. Has your pace of working on these
22 assignments changed over time?

23 A. Yes.

24 Q. So within approximately the past year,
25 how many of these have you done?

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2 A. Ballpark, 20 to 30.

3 Q. Over the past year do you know how much

4 revenue your firm has derived from your labor

5 economics services?

6 MS. PRIMAVERA: Objection.

7 A. No, I don't.

8 Q. Are you compensated on an hourly basis?

9 A. No.

10 Q. Are you salaried?

11 A. Yes.

12 Q. Do you receive any increase in your

13 compensation based upon the revenue that you

14 generate during the course of the year?

15 A. No.

16 Q. Turning to your report, can you please

17 identify for me any opinions that it contains?

18 MR. BERMAN: By the way, it's 12:10.

19 Let me know if anyone wants a break. I just

20 want to put that out there.

21 THE WITNESS: Let me answer this

22 question and I'll do a quick bathroom break.

23 A. Opinions that I have in this matter as

24 contained within my report would be that Ms.

25 Fischman's documented job search activities based

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2 upon the materials provided to me were

3 predominately consisted of online employment

4 applications. Her job search activities tended

5 to be bunched together on a particular day and

6 then there would be gaps in between her next

7 search activity.

8 An additional opinion would be based
9 upon the New York Department of Labor with regard
10 to the efforts of a job seeker. That a job
11 seeker under the New York Department of Labor
12 standards must perform three work search
13 activities per week. That as of the time of my
14 report, that we would have expected to maintain
15 that minimum standard that Ms. Fischman would
16 have done 594 job search activities. That based
17 upon the documents provided in discovery, I
18 totaled or tallied only 106 job search activities
19 for Ms. Fischman. That an individual seeking
20 work after separation, the goal or the time
21 effort that should be set forth by that job
22 seeker should become a full-time job. So the
23 information indicates that a job seeker should be
24 spending 25 to 40 hours per week looking for
25 re-employment. That based upon her job search,

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2 that Ms. Fischman tended almost exclusively to

3 use Linked-In as a source of job contacts. It

4 did not appear that she used online job

5 databases, headhunters, leveraging her prior

6 economic institutions, career placement

7 departments.

8 And based -- in totally based upon the
9 standards set forth by the State of New York,
10 based upon her demonstrative efforts that her job
11 search efforts fell far short of being reasonable
12 an diligent.

13 The next layer of my opinion then goes
14 towards a more specific search. Other opinions
15 would relate to the average duration of
16 unemployment for lawyers and people similar to
17 Ms. Fischman based upon gender, age and general
18 occupation. That based upon certain criteria we
19 would have expected Ms. Fischman to have found
20 re-employment within a period of rounding 10
21 weeks up to 37 weeks with an overwhelming
22 majority having found that within that time
23 period.

24 And then survey specific job
25 opportunities in my opinion relate to a number of

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2 opportunities that existed for Ms. Fischman based
3 upon a dataset acquired for lawyers from the
4 period of February 1st, 2017 through April 6,
5 2020, in the New York Metro area, which would
6 include Newark, New Jersey and Jersey City. That
7 there were 6,409 job opportunities to be examined
8 by Ms. Fischman. And then when we start to
9 control or remove for certain specific employment
0 types -- you see on page seven my opinion would
1 be that of the most relevant would be 551
2 employment opportunities.

When you compare, again, the specific job employment opportunities per search effort, combined with the standard set forth by the New York Department of Labor, which is similar to most states I've seen within the United States, Ms. Fischman's efforts to find subsequent employment were not reasonable, not sustained and diligent when blended with broad economic data of the marketplace and specific data to lawyers in the New York Metro area.

23 0. Have you completed your response?

24 A. Let me review my report to make sure I
25 captured all of my opinions.

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2 Also, at this time and as I discuss in

3 my report, so for a complete record here and

4 contained within the four corners of my report,

5 that should Ms. Fischman prevail on her claim of

6 wrongful termination based upon her human

7 capital, her experience, I would not see as an

8 economist -- or a labor economist standpoint any

9 permanent diminution or lifetime loss of earnings

10 for Ms. Fischman.

11 Q. Have you completed your response?

12 A. Just for the record, in sum, based upon

13 totally of information I had in this matter from

14 Ms. Fischman, as well as labor market statistics

15 an job opportunities acquired specific to Ms.

16 Fischman and her vocation, Ms. Fischman did not

17 conduct a reasonable or diligent job search and

18 did not perform a reasonable effort to mitigate

19 her efforts.

20 That would be the totality of my

21 opinions.

22 Q. Is it fair to say the last one you just

23 described was a summary of the previous ones?

24 A. Correct, yes, those were the dillying up

25 to the finale.

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2 Q. I'm cognisant of your request to take a
3 break, I just want to -- I possibly missed a
4 portion of your area and I want to make sure I
5 got it.

6 You said that after removing and controlling
7 for certain jobs, 551 remained, correct?

8 A. As you see on my table on page seven,
9 correct, the pole starts out at 6,409 and then as
10 you see -- depending again when you remove
11 certain titles or qualifications within the
12 dataset you're left with 551 after removal of all
13 those qualifications.

14 However, based upon Ms. Fischman's
15 resume, her training and experience, I don't
16 think she's limited to the 551. I just wanted to
17 put on a filter of how we would examine the labor
18 market of specific opportunities that existed
19 from February 1, 2017 through April of 2020.

20 Q. I got it. And you mentioned two other
21 opinions plus your summary after that. I just
22 want to make sure I got the gist of them at a
23 high level and then after the break we'll go
24 through them.

25 The opinion after that -- I'm not sure I got

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2 it -- you said something about how her efforts
3 weren't reasonable, sustained and diligent; did I
4 get the gist of that one?

5 A. Yes.

6 Q. And there was one after that said no
7 loss of earnings, did I get the gist of that one?

8 A. No, lifetime loss of earnings.

9 Q. Lifetime, okay. And the one after that
10 was the summary -- the totality of your findings,
11 right?

12 A. I believe so, yes.

13 MR. BURMAN: Let's take a break now.

14 What time is it? It's 12:20. We'll take a
15 break now and then we will take a break when
16 we get to lunchtime.

17 And if you have a preferred time to
18 break for lunch, please let me know.

19 MR. FORTINSKY: How long, five minutes?

20 MS. BERMAN: Five minutes.

21 (Whereupon, a brief recess was taken.)

22 Q. Mr. Staller, turn to page three of the
23 report. I will direct your attention to section
24 three of your report where it says, "Job search
25 activities" do you see where I'm referring you

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2 to?

3 A. Yes.

4 Q. The first line of text here under the
5 section says, "Subsequent to her separation from
6 her employment with Mitsubishi, Ms. Fischman
7 sought employment in a similar capacity -- and
8 there's a footnote there. Do you see that?

9 A. Yes.

10 Q. So your footnote is referencing
11 documents produced by Ms. Fischman in case
12 describing her job search, correct?

13 A. I don't know if the documents are
14 describing it but I think it summarizes it.

15 Q. Based on those documents did you
16 conclude Ms. Fischman sought employment in a
17 similar capacity?

18 A. Through those documents for a period of
19 time, yes.

20 Q. And then there's a table under that that
21 says "Table A: Fischman documented job search
22 activities." Do you see that table?

23 A. Table A, yes.

24 Q. Is that table similarly based upon the
25 documents referenced in footnote 12, Fischman

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2 000001 through 303?

3 A. Yes.

4 Q. Does this table breakdown documented job

5 search activities by Ms. Fischman in each month

6 of each year from 2017 through 2018?

7 A. Through May of 2018, yes.

8 Q. The first entry on that chart is for

9 February of 2017, right?

10 A. The first entry is February of 2017.

11 Q. We agree, right?

12 A. I do.

13 Q. And you identified 17 documented job

14 search activities for Ms. Fischman during that

15 period of time, correct?

16 A. Yes, but I think one was on January

17 30th -- you'll see that footnote, 14. But 16

18 were in the month of February, yes.

19 Q. With respect to the footnote you just

20 identified, footnote 14, that footnote states it

21 includes -- the table includes one effort from

22 January 30, 2017; is that correct?

23 A. Yes.

24 Q. Now, is there any significance to the

25 date January 30, 2017?

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2 A. I believe that's the date she separated
3 with Mitsubishi.

4 Q. Do we agree that on the very day she was
5 separated from Mitsubishi, she engaged in a job
6 search effort?

7 A. True.

8 Q. Thank you. Looking down below the
9 table, do you see that paragraph says, "Based on
10 the data above, Ms. Fischman made a total of 106
11 job search activities between January 30th of
12 2017 and May 6, 2018, approximately 1.61 job
13 search efforts per week." Do you see that
14 section?

15 A. Yes.

16 Q. Is that just math?

17 MS. PRIMAVERA: Objection.

18 A. It is.

19 Q. That's how you got to number, right, you
20 took the number of job search efforts and
21 averaged it over the period of time, correct?

22 A. It's taking the total reported
23 activities that are summarized in Fischman 1
24 through 303, and then dividing that by the number
25 of weeks, correct. Then you arrive at 1.61

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2 activities per week.

3 Q. So that's based on a monthly average for
4 each of those months identified from
5 February 2017 through May of 2018; is that
6 correct?

7 A. So 1.61 represents a weekly average.

8 Q. A weekly average, okay.

9 But it was taken over -- that's the average
10 per week over the period from February 2017
11 through May of 2018, right?

12 A. Yes.

13 Q. And then the next sentence there says,
14 "Assuming an ongoing search from January 30, 2017
15 to the current date, Ms. Fischman averaged 0.54
16 job search activities per week." Do you see that
17 sentence?

18 A. Yes.

19 Q. Are how did you calculate -- what period
20 of time is that average calculated over?

21 A. Through February of 2017 through
22 October 23rd of 2020.

23 Q. So to arrive at this figure, did you
24 take the total of 106 jobs and average it over
25 the period you just described?

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2 A. Did I -- correct, so I received no
3 additional document after May of 2018. So it's
4 taking the same 106 contacts and then dividing it
5 through more weeks, a longer period of time.

6 Q. What's the significance of averaging it
7 out over a longer period of time when there were
8 no job search efforts in that period of time?

9 A. My understanding of the law, Ms.

10 Fischman had a continuing duty to mitigate. To
11 my understanding, she's -- at some point in time
12 became a real estate agent or working with her
13 mother's real estate firm doing real estate
14 transactions.

15 However, her duty to continue to find
16 comparable employment continues even after taking
17 the time to get into the real estate business so
18 that duty continues and persists through the
19 present date so that just demonstrates -- this
20 adequately represents the continued efforts or
21 lack thereof of Ms. Fischman to find comparable
22 legal positions.

23 Q. So is your legal opinion a foundational
24 item for taking this average?

25 MS. PRIMAVERA: Objection.

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2 A. So I'm not offering a legal opinion.

3 I'm sure the Court will instruct the jury on the
4 law. I'm going based upon my background and
5 training and experience in the law as well as the
6 forensic economics. As it relates to the
7 presentation of my analysis, my understanding of
8 the law in Federal courts in New York would be
9 that there's a continuing duty to mitigate and to
10 that extent I will explain to the jury where I
11 arrive at the .61 and the .55.

12 Q. But you're not offering expert legal
13 testimony, correct?

14 MS. PRIMAVERA: Objection.

15 A. True, I am not.

16 Q. So it's not your intention to testify as
17 to what the law is at trial, is it?

18 A. My intention is not to testify to the
19 law at trial. I can't predict all the cross
20 examination questions. So I will answer those
21 questions as I deem fit and accurately and
22 appropriately. But as far as why I got -- throw
23 in the .55, that's a the basis for throwing in
24 the .55.

25 Q. Is your understanding of the law of

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2 mitigation current?

3 MR. FORTINSKY: I'm sorry, I didn't hear
4 the last part.

5 MR. BERMAN: Can you read it back,
6 please.

7 (Whereupon, last question read back.)

8 A. I haven't done a recent -- when I say
9 "recent," I'm talking the last 30, 60 days case
10 law search. But as far as current, we would go
11 back prior to that, that's as of the spring of
12 2021. That's my understanding of the law.

13 Q. During the course of your duties at CFES
14 do you perform legal research?

15 A. I will from time to time as a forensic
16 economist. As we discussed earlier, the context
17 of the word forensic and the word economics. My
18 economic analysis is being applied into the
19 public forum of the courthouse. To that extent
20 that my economic analysis must conform to the law
21 of this specific jurisdiction, my analysis -- my
22 research would be related to my analysis to make
23 sure it comports to the relevant laws of specific
24 jurisdiction.

25 Q. Did you make take any steps to ensure

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2 that your expert analysis here conforms to the

3 law of the jurisdiction where this case is filed?

4 A. When I was preparing my report in

5 November of '20, yes, based upon the Second

6 Circuit laws, yes.

7 Q. Is it there a particular --

8 MR. BERMAN: I'll rephrase.

9 Q. Was there any particular subject matter

10 that you kept abreast of as of that November of

11 2020 timeframe you just identified?

12 A. The subject matter would be through

13 mitigation efforts of a plaintiff and an

14 appointment matter pending in the Second Circuit.

15 Q. What about subject matter related to the

16 permissible scope of expert testimony?

17 A. I can't -- it seems too vague of a

18 question for me to answer.

19 Q. Well, you're a trained attorney,

20 correct?

21 A. Yes.

22 Q. And I think you testified that you

23 perform legal research concerning the application

24 of your economic analysis so that it conforms to

25 the law of the specific jurisdiction, did I get

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2 that right?

3 A. Yes.

4 Q. Okay. So the legal research that you
5 perform include the permissible scope of your
6 ability to testify as an expert.

7 A. You're asking me or telling me?

8 Q. I'm asking you if it includes that
9 subject matter?

10 A. I have done that research in general
11 terms, yes.

12 Q. Did you do that research up through that
13 period that you just described, which was
14 November of 2020?

15 A. Yes.

16 Q. So is it fair to say that as of that
17 time in November of 2020, you were informed
18 concerning the permissible scope of your
19 testimony in this jurisdiction?

20 A. So, again, I think "permissible" is not
21 a proper legal conclusion. I think the Court
22 will indicate what's permissible. I'm generally
23 familiar with what courts allow with regard to my
24 testimony in the field of labor economics and
25 employment discrimination matters.

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2 Q. Thank you. Have you ever been employed

3 as a professional recruiter?

4 A. No.

5 Q. Are you a vocational expert?

6 A. No.

7 Q. Are you industrial psychologist?

8 A. No.

9 Q. Are you organizational psychologist?

10 A. No.

11 Q. Are you an industrial organizational

12 psychologist?

13 A. No.

14 Q. Are you a professor?

15 A. Yes.

16 Q. What are you a professor of?

17 A. Economics.

18 Q. Where are you professor, sir?

19 A. Temple University.

20 Q. What kind of appointments do you have at

21 Temple University?

22 A. Adjunct faculty member at the Beasley

23 School of Law.

24 Q. How long have you been in that capacity?

25 A. Thirteen years.

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2 Q. Are you published?

3 A. Yes.

4 Q. What literature are you published in?

5 A. Various journals as fully set forth
6 within my curriculum vitae.

7 Q. All your publications are in your CV?

8 A. Yes.

9 Q. Are there any publications that you have
10 contributed to that are not listed in your CV?

11 A. No.

12 Q. Have you held any other professorships?

13 A. I lectured at other institutions but not
14 sat on their faculty.

15 Q. Where have you lectured?

16 A. Villanova School of Law, Drexel School
17 of Law, the University of Baltimore School of Law
18 and the University of Pennsylvania.

19 Q. Was that the University of Pennsylvania
20 or was it a particular school thereof?

21 A. It was within their arts and science
22 department.

23 Q. What was the subject matter of your
24 lectures at Villanova Law?

25 A. Villanova Law was the civil litigation

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2 class that related to working with experts, what
3 experts -- the role of experts in civil
4 litigation, the difference between liability and
5 damages experts and the roles of each.

6 Q. What was the nature of your lectures at
7 Drexel?

8 A. Drexel would be on the same topic some
9 of the times. Other times it dealt with
10 deposition practice, the students are within
11 their trial advocacy class and then they have a
12 deposition section and I would work with the
13 students on deposing experts and then we run
14 through a vignette and let them depose me for a
15 while.

16 Q. What were the subject matter of your
17 lectures -- I believe you said it was the
18 University of Baltimore.

19 A. Baltimore would be similar to that of
20 Villanova, working with experts and some
21 litigation, what civil litigation looks like
22 outside of your tort textbook.

23 Q. Have you completed your response?

24 A. Yes.

25 Q. What was the subject at of your lectures

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2 at the University of Pennsylvania School of Arts
3 and Sciences?

4 A. That dealt with labor economics, survey
5 of what economists -- this is several years
6 ago -- I believe it was a survey of economic
7 issues in the labor market. That also talked
8 about what economists may do as forensic
9 economists.

10 Q. With respect to your lectures at
11 Villanova Law, did those concern economics?

12 A. Yes.

13 Q. What aspect of economics did the
14 Villanova lectures encompass?

15 A. Present value, marginal loss analysis,
16 human capital models.

17 Q. Did any of those lectures -- did any of
18 those lectures relate to the subject matter of
19 evaluating the labor market after the separation
20 of employment for an individual?

21 A. My lectures would discuss that at my
22 employment at Temple.

23 Q. So that's a not included in what you did
24 at Villanova, is it?

25 A. I don't -- I don't recall that being

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2 discussed at Temple.

3 Q. I'm asking you about Villanova.

4 A. Sorry. Villanova?

5 Q. Yes.

6 A. I don't recall that being discussed at
7 Villanova.

8 Q. Did your Villanova lectures cover
9 potential employment opportunities and
10 identifying those relevant opportunities?

11 A. At Villanova?

12 Q. Yes.

13 A. I don't recall.

14 Q. Did your work at Villanova involve
15 pairing labor and economics data with job search
16 efforts?

17 A. I don't recall.

18 Q. What about at Drexel?

19 A. At Drexel -- I believe I discussed that,
20 yes.

21 Q. With what about at the University of
22 Baltimore?

23 A. No, I don't believe so at the University
24 of Baltimore.

25 Q. What about at the University of

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2 Pennsylvania?

3 A. Labor economic issues I lectured on
4 there. I don't know if pairing the two
5 together -- I don't recall that but I know it was
6 the topic of labor economics.

7 Q. Are you familiar with the Journal of
8 Applied Psychology?

9 A. No.

10 Q. Are you familiar with the Journal of
11 Business in Psychology?

12 A. No.

13 Q. Do you use either of those two journals
14 in the course of your professional duties at
15 CFES?

16 A. No, I'm not aware of them.

17 Q. Have you won any awards for research?

18 A. To the extent that the awards that I
19 received that are identified on my CV are related
20 to specific matters and my work in specific
21 matters, those matters all require research. So
22 I would say, yes, to your question.

23 Q. None of the awards were directly as a
24 result of research performed or on the basis of
25 research performed, correct?

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2 A. Right. So if your question is saying
3 was an award directly tied to one specific type
4 of research, true, my awards were not for one
5 micro or specific type of research.

6 Q. And you don't have any award-winning
7 research, do you?

8 A. Collectively I would say, yes. But,
9 again, as far as one specific investigation or
10 one specific topic, no.

11 Q. When you say "collectively," what are
12 you referring to?

13 A. The awards that are identified on page
14 one of my curriculum vitae being recognized --
15 unfortunately several years ago as I get older --
16 for the "Top 40 under 40" for my work as a
17 forensic economist. My work as a forensic
18 economist relates to doing research in a specific
19 case, developing economic loss models and then
20 either testifying to those conclusions or
21 drafting reports to those conclusions.

22 Likewise, having received the best of
23 award through The Legal Intelligencer for best
24 economist from the years 2010 through 2021 -- it
25 says 2018 on my CV -- I have to update that.

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2 Same answer, that's being derived and awarded for
3 my work and research on specific matter.

4 Q. Do any of those awards relate to
5 comparing the job search efforts of a terminated
6 individual to available employment opportunities?

7 A. Again, to the extent that my work as a
8 labor economist in my field of forensic
9 economics, yes.

10 Q. What do you mean by that? Do you
11 receive an award for comparing job search efforts
12 of a separated employee to their available
13 opportunities for employment?

14 MS. PRIMAVERA: Objection.

15 A. So it would be my same answer to your
16 same question. It would be -- again, from a
17 collective process as a forensic economist, a
18 portion of my work -- we discussed now that
19 roughly 1,000 matters that I've worked on are
20 related to labor economic issues. Some portion
21 between greater than 100 or up to 1,000 are
22 related to the application of a job search
23 efforts of a specific plaintiff compared to
24 relative labor market data. To the extent that a
25 portion of my work there was recognized and I was

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2 awarded for that work as either a Top 40 Under 40
3 through the organization, NACVA or recognized
4 through Legal Intelligencer's Best Of survey for
5 my work in my field as a forensic economist,
6 which again a good portion is labor economics, a
7 good portion is the application of the labor
8 market compared to a specific person's job search
9 efforts, I've been recognized for that work.

10 On an individual basis for one specific
11 research project, no.

12 Q. Thank you. Have you received any
13 specific awards connected to research in the
14 field of job searching?

15 A. I'm not aware if search award exists.

16 Q. Have you received any awards
17 specifically tied to efforts to compare the
18 similarity of jobs?

19 A. I've never seen such award existing on
20 that topic.

21 Q. Have you done work developing selection
22 procedure for jobs?

23 A. I don't understand the question.

24 Q. Have you done any work related to the
25 process for selecting candidates for employment?

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2 A. To the extent as our firm's president
3 and I've hired and terminated individuals, the
4 answer would be yes.

5 Q. Other than in your position as the
6 president of an organization that conducts its
7 own hiring, have you done any other work
8 developing selection procedures for selecting job
9 candidates?

10 A. No.

11 Q. Have you done any work concerning the
12 validation of selection procedures for hiring
13 candidates?

14 A. It would be the same answer with regard
15 to operating and hiring and firing for CFES since
16 2008.

17 Q. Have you received any training
18 concerning the comparison of one job to another
19 job?

20 A. So I can't answer yes or no to that.
21 That's, obviously, a broad question. Can you
22 refine the question.

23 Q. Are you familiar with the field of
24 industrial organizational psychology?

25 A. I'm aware of it as a field.

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2 Q. Do you know what general subject matter
3 of that field pertains to?

4 A. Psychological issues related to the
5 operation of the firm.

6 Q. Do you know whether industrial
7 organizational psychologists regularly use the
8 science of job analysis?

9 A. I don't know.

10 Q. Are you familiar with the science of job
11 analysis?

12 A. How are you defining the term?

13 Q. I'm defining the term the way it's used
14 within the field of industrial organizational
15 psychology.

16 A. I can't say yes or no because I don't
17 know how they're defining the term.

18 Q. So you're not familiar with the science
19 of job analysis as it's performed by those in the
20 field of industrial organizational psychology,
21 correct?

22 MS. PRIMAVERA: Objection to form.

23 Mischaracterizes the testimony.

24 Q. You can answer the question.

25 A. I don't know because I don't know how

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2 they're defining it. Unless you want to provide
3 me the definition, I can answer the question.

4 Q. It's fair to say you're not familiar
5 with the definition of job analysis as practiced
6 by industrial organizational psychologists,
7 correct?

8 A. Not off the top of my head, correct.

9 Q. Okay. Do you know whether the science
10 of industrial organizational psychology is used
11 for a wide array of activities, including
12 generating job descriptions?

13 A. I don't know.

14 Q. Do you know whether acute principle from
15 a scientific standpoint in building such systems
16 is that they accurately reflect the job?

17 A. I'm not familiar with how you're using
18 the word "they" in your question.

19 Q. I'm referring to industrial
20 organizational psychologists.

21 A. Can you restate the question.

22 MR. BERMAN: Can you please read back
23 the question, Toni.

24 (Whereupon, last question read back.)

25 A. I don't understand your question. Can

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2 you rephrase it, please.

3 MR. BERMAN: Toni, can you read it one

4 more time.

5 (Whereupon, last question read back.)

6 Q. Do you know that there's a science used

7 in connection with generating job descriptions?

8 A. I don't know.

9 Q. Do you know anything about that science?

10 A. To the extent there is a science being

11 applied in a specific job or every job, I don't

12 know. But if there is science, I'm not aware of

13 that science.

14 Q. Are you aware of any science concerning

15 the creation of hiring and promotion assessments?

16 A. Is your question now the science of

17 hiring and promotion assessments?

18 Q. Creating hiring and promotion

19 assessments, correct.

20 A. So that's compound. Can we break it

21 down?

22 Q. Sure. Are you aware of the science of

23 creating hiring assessments?

24 A. I'm aware within hiring practices of

25 various assessments maybe employed to vet various

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2 candidates. I don't know how you're using the
3 term "science" -- if it's used in a different
4 way. But I can -- as far as the question is
5 worded, that's my answer.

6 Q. Are you aware that there's a science
7 that is connected to the creation of those
8 assessments?

9 A. I can't say on the record that every
10 employer uses science in creating assessments.
11 To the extend that some employers sometime may
12 use a scientific assessment, that's a possible.

13 Q. Do you recognize that there is a science
14 that can be applied to the creation of hiring
15 assessments?

16 A. I don't know.

17 Q. Do you know anything about the science
18 of creating promotion assessments?

19 MR. FORTINSKY: I am just going to
20 object to form to all these questions about
21 the sign of. I don't really get what that
22 means.

23 MS. BERMAN: This witness is presented
24 as an expert witness on topics involving the
25 comparison of jobs. I'm asking him what he

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2 knows about that science.
3 MR. FORTINSKY: Well, I don't
4 understand -- biology is a science, it's the
5 study of life; astronomy is a science, it's
6 the study of outer space; chemistry is a
7 science -- I don't understand what it means
8 when you say, you know, the science of job
9 whatever.

10 I mean, what's that the study? I just
11 don't get this whole line of questions
12 about --

13 MS. BERMAN: I noted your objection for
14 the record. Let's move on without the
15 coaching of the witness, okay?

16 MR. FORTINSKY: Sure.

17 Q. Sir, do you know anything about any of
18 the subdisciplines contained within the field of
19 industrial organizational psychology?

20 A. It depends on -- if you identify the
21 sub -- I can tell you whether I'm aware of
22 information. I don't know about --

23 Q. Those subfields would include generating
24 job descriptions, are you familiar with that
25 subfield of industrial organizational psychology?

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2 A. Am I familiar with it?

3 Q. Yes.

4 A. Not as a labor economist. When you use
5 the term "familiarity," I have familiarity.

6 Q. So you're not an expert in any of the
7 subfields of industrial organizational
8 psychology, correct?

9 MS. PRIMAVERA: Objection.

10 A. True, I'm not an industrial
11 psychologist. That's correct.

12 Q. Do you have any specialized training
13 concerning establishing the similarity between
14 two jobs?

15 A. So overly broad and vague, your
16 question. As it relates to Ms. Fischman, the
17 answer would be, yes, based upon the fact that,
18 again, I've been a licensed attorney since 2001,
19 licensed in three states. In this specific
20 matter, Ms. Fischman was a licensed attorney that
21 had a legal position within the defendant. So as
22 job similarity would go, in this particular
23 matter, yes, I have training and experience.

So your overall question will depend on
the industry and the type of employment a person

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2 had and the nature of employment and the job
3 duties a person has. But in this particular
4 case, yes.

5 Q. Wouldn't the expertise you just
6 described the same as any other attorney would
7 have in identifying and comparing attorney jobs?

8 MS. PRIMAVERA: Objection. Can you
9 repeat that question back, please.

10 (Whereupon, the last question read
11 back.)

12 MS. PRIMAVERA: Objection.

13 A. So this whole line of questioning I'm
14 bit confused, Mr. Berman, because you spent some
15 time going into the concept of comparing and job
16 hiring practices with whatever science there may
17 be for promotion or science you may suggest with
18 request to hiring, promotions, job postings.

19 As explicitly stated in my report and
20 what I've testified to earlier, my role here was
21 to identify opportunities that existed for Ms.
22 Fischman to pursue within the legal field. My
23 role is here is not to compare her job at
24 Mitsubishi to any of those 6,409 opportunities
25 identified --

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2 Q. Was --

3 A. -- I'm not done with my answer. I
4 thought one of your rules was not to talk over
5 each other.

6 Q. Sorry. Have you completed your
7 response?

8 A. No, I didn't.

9 Q. Please continue.

10 A. I'm happy to continue answering any
11 questions you have.

12 Just so the record is clear, and what
13 the scope of my testimony is today and at the
14 time of trial is, my goal was to look at the
15 opportunities that existed in the New York Metro
16 area for a licensed attorney, similar to Ms.
17 Fischman, based upon her years of experience in
18 the legal market, based upon her experience at
19 Mitsubishi and identify those opportunities she
20 could have pursued.

21 As far as obtainment of those positions,
22 we'll never know because she didn't apply. We
23 know she made 106 contacts over roughly a two
24 year period. So that's what I'm looking at, the
25 fruits of her efforts compared to the dynamic

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2 market that existed for an attorney similar to
3 Ms. Fischman.

4 Any questions you have with regards to
5 the receipt of a specific job or comparing one
6 job to the other, my goal here is not to compare
7 job "A" to job "B" but to identify opportunities
8 she could have applied to, interviewed and then
9 she could have determined whether she was a good
10 fit for that job or that employer will make that
11 determination. Those events did not happen.

12 Q. Have you complete your response?

13 A. I have.

14 Q. Wasn't it part of your job to determine
15 whether the opportunities identified were
16 suitable for Ms. Fischman?

17 A. Correct. Suitable in the sense based
18 upon her resume, described work, within her prior
19 job description within Mitsubishi and her work
20 experience and then what the market looked like
21 based upon what Ms. Fischman had done previously
22 as identified to the marketplace she's done
23 previously as identified on her resume.

24 Q. Let me drill down on that. Didn't you
25 say you looked at Department of Labor statistics

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2 concerning a specific MSA?

3 A. Right. The metropolitan area, yes.

4 Q. Metropolitan statistical area, correct?

5 A. Yes.

6 Q. Doesn't that data derive from US Census?

7 A. It does, yes.

8 Q. Do you know how often that data is

9 updated?

10 A. Which data? US Census has a lot of
11 data.

12 Q. Do you know how often the US Census
13 takes place?

14 A. Well, a full census is every 10 years
15 and then they have more updates throughout that
16 10 year period.

17 Q. Do you know how often those updates take
18 place?

19 A. So they're going to ask different
20 questions over different time period. Your
21 question has to be refined.

22 Q. The metropolitan statistical area that
23 you included contained jobs from New Jersey,
24 correct?

25 A. It does, yes.

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2 Q. Is Ms. Fischman licensed to practice law
3 in New Jersey?

4 A. I have to go back to her resume.

5 Q. We can do that right now if you would
6 like. Do you have access to her resume?

7 A. Yes, I'm looking at it now.

8 Q. I will direct you to page three of her
9 resume.

10 MR. BERMAN: Can you pull it up, Toni,
11 it was previously marked as plaintiff's
12 Exhibit 6.

13 THE WITNESS: I think it's on page
14 three.

15 MR. BERMAN: It should be on the bottom
16 of page three.

17 And let the record reflect the witness
18 is being shown an exhibit previously marked
19 as plaintiff's Exhibit 3 (sic) and
20 specifically his attention is being directed
21 to page marked Def000722.

22 A. It appears -- to answer your question, I
23 believe the question pending is what bar
24 admissions Ms. Fischman had, correct?

25 Q. Well, yes, you know what bar admissions

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2 she has, right?

3 A. It appears, as she represented on her
4 resume, California State license and then the
5 Federal Court appears, Central District of
6 California.

7 Q. Is Ms. Fischman licensed to practice law
8 in New Jersey?

9 A. Not as of the time of this resume.

10 Q. Right. So would jobs in New Jersey for
11 an attorney be suitable for Ms. Fischman giving
12 her licensing?

13 MS. PRIMAVERA: Objection.

14 A. Yes. For the same reason that her
15 Mitsubishi employment was in New York and she
16 didn't have a New York license or Federal
17 license. To the extent that she would be using
18 her legal skills for a national -- international
19 company like Mitsubishi that they be a resident
20 or have an office in New Jersey, that would be
21 applicable. To the extent that many attorneys
22 over years have applied for and received
23 additional bar licenses, such as myself, it's a
24 very feasible idea. So the mere fact of a lack
25 of a state admission is not dispositive on any

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2 issue or any ability for her to apply or seek
3 again an opportunity in New Jersey. These are
4 opportunities she could have pursued.

5 Q. Sir, are you aware that the detail of
6 the job posting that you included in your expert
7 report specifically require licensing in certain
8 states?

9 A. Some of the opportunities do. And I'm
10 sure you're well aware, Mr. Berman, the whole
11 idea is creating opportunities that while some of
12 those opportunities may suggest a specific state
13 licensure, once they met Ms. Fischman and saw the
14 breath of her experience and training, then they
15 will be interested in pursuing suing conversations
16 with her. So, again, these were opportunities
17 that could have been pursued.

18 Q. Are you suggesting, sir, that an
19 employer who specifically requires in their job
20 posting a New Jersey license that that employment
21 is still suitable for Ms. Fischman who is not
22 licensed in New Jersey?

23 MS. PRIMAVERA: Objection.

24 A. What I'm suggesting is, one, you haven't
25 shown me a specific ad. If you want to point one

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2 out we can discuss it. Some ads may require

3 certain state licensure or suggest certain state

4 licensure. However, as we all know, what we call

5 in economics and hiring practices a thin down

6 market, these are opportunities that one would

7 explore to see if there's a fit. Given Ms.

8 Fischman's over 20 years experience in the law,

9 if she was a good fit for the company. Otherwise

10 state licensure, and that can be acquired through

11 a quick either application process or studying

12 for the bar, that would not be dispositive on the

13 issue not to apply for the jobs based upon her

14 credentials and potential job opportunity.

15 Q. So it's your testimony that you know
16 better than the employer what qualifications are
17 required for the positions listed?

MS. PRIMAVERA: Objection. You don't have to answer that question.

20 Q. You can answer the question unless the
21 attorney instructs you not to answer the
22 question.

23 MS. PRIMAVERA: Can you rephrase it. It
24 didn't sound like an actual question

25 Can you read that back

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2 (Whereupon, last question read back.)

3 MS. PRIMAVERA: Same objection and
4 request for Mr. Berman to restate that
5 question.

6 Q. Is it your testimony, Mr. Staller, that
7 where an employer specifically lists in their job
8 posting the requirement for a New Jersey license,
9 that that position is still somehow suitable for
10 Ms. Fischman to apply to?

11 A. Given the totality in my experience in
12 the law, which now goes over 20 years, and the
13 hiring practice of lawyers, yes, the mere -- I'm
14 not saying I know better -- I'm saying that's an
15 appropriate opportunity, all other criteria set
16 by Ms. Fischman for a potential opportunity is
17 worth her pursuing in her continuing duty to
18 mitigate her damages following her separation
19 from Mitsubishi --

20 Q. If --

21 A. If you want to cut me off, we're going
22 to be here all day, Mr. Berman.

23 Q. I thought you were finished.

24 A. So with regard to her ongoing duty to
25 mitigate, these are opportunities that would

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2 exist for her to explore. Would she get every
3 job, no, but would these be appropriate based
4 upon the criteria set forth in my search
5 parameter, her resume, these would be appropriate
6 search opportunities for her to explore.

7 Q. If the employer lists the requirement,
8 then what scientific or expert basis are you
9 using to counter in the employer's description of
10 the job?

11 MS. PRIMAVERA: Objection.

12 Q. What facts are you relying upon to show
13 that an employer who requires or states a
14 requirement for a New Jersey license will
15 actually hire someone without that license?

16 A. That's not a barrier to entry. Licenses
17 are obtainable. She can either -- based upon her
18 experience -- depending on the rules of
19 reciprocity with her California license, fill out
20 the relevant paperwork or she could sit for the
21 bar like many practicing attorneys do if all
22 other criteria of the job was a perfect match for
23 Ms. Fischman.

24 Q. You listed jobs here --

25 MS. PRIMAVERA: Mr. Berman -- Mr.

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2 Staller, are you finished with your
3 response?

4 THE WITNESS: I wasn't, no.

5 MS. PRIMAVERA: Let's do one at time,
6 please.

7 Mr. Staller, can you continue or do you
8 want the court reporter to read back what
9 you said so far.

10 THE WITNESS: Can you read back the
11 question, I can finish my answer.

12 (Whereupon, last question read back.)

13 A. To continue with my answer now on the
14 record, that would be an appropriate opportunity
15 for Ms. Fischman to have sought.

16 Q. Have you completed your response?

17 A. Yes, I have.

18 Q. Can you please turn to page 512 of the
19 expert report. So we are looking at a sample job
20 listing that you included in your analysis,
21 right?

22 A. We're looking at one specific one right
23 now. You said page 512?

24 Q. Yes. I just picked one out to look at
25 as an example. There are hundreds of them,

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2 right?

3 A. Hundreds of postings. I don't know --

4 there's hundreds of postings.

5 Q. Okay. So then, for example, this one

6 here says license requirement. Do you see in the

7 fourth line of the content description?

8 A. Yes.

9 Q. It says, "Reviewers on this matter must

10 be licensed and in good standing with the State

11 of New York," right?

12 A. This was does say that, yes.

13 Q. Is Ms. Fischman licensed within the

14 State of New York?

15 A. Not as of the date of -- the resume we

16 were looking at earlier.

17 Q. In considering what opportunities were

18 suitable for Ms. Fischman, did you include

19 opportunities that she was not licensed to work

20 for?

21 A. It includes certain opportunities that

22 do have state licensure that at the time Ms.

23 Fischman appears she might not have had.

24 Q. And you mentioned that in your view it

25 was a possibility for her to get bar reciprocity,

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2 correct?

3 A. So I will -- this job was posted in
4 December of 2019. I believe she separated in
5 January of 2017. To the extent she wanted to
6 take the bar for the State of New York or any
7 other states to continue her obligation to
8 mitigate her damages, she could have done so.
9 But my opinion is also, yes, that this would be
10 an appropriate opportunity to have reached
11 contact out to.

12 MR. BERMAN: I object to the
13 nonresponsive portion of your answer.
14 That's not what I asked you.

15 Toni, can you read back the question.

16 (Whereupon, last question read back.)

17 A. In a general concept, yes.

18 Q. Do you have any factual basis for
19 considering whether Ms. Fischman was eligible for
20 bar reciprocity with the State of New York?

21 A. At what point in time?

22 Q. Any point in time.

23 A. Again, that's a super vague question.
24 You have to look at standard of a specific
25 clientele.

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2 Q. Are you suggesting that the standard for
3 bar reciprocity between California and New York
4 has changed during the relevant period of time?

5 A. I haven't looked into it so I can't say
6 yes or no.

7 Q. The same question with respect to
8 reciprocity between California and New Jersey,
9 have you looked into that?

10 A. Again, your question doesn't -- at a
11 certain point in time?

12 Q. At any point in time, have you looked
13 into the requirements for
14 reciprocity between the State of
15 California and the State of New Jersey?

16 A. No.

17 Q. Do you know how often the State of New
18 York offers the bar exam?

19 A. As of 2021 -- again, you're not
20 referencing your question to any period of time.

21 Q. At the time of Ms. Fischman's separate
22 from Mitsubishi, do you know how often the State
23 of New York offered the bar exam?

24 A. As of 2017, I believe twice a year.

25 Q. So do you know what the earliest point

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2 that Ms. Fischman could have satisfied the
3 requirement for a New York State bar licensing
4 was?

5 A. February of '17 I imagine she could have
6 sat for the bar. I don't know the lead time but
7 I believe there's a bar in February and a bar in
8 July.

9 Q. Your licensed in three states as an
10 attorney, correct?

11 A. That's true.

12 Q. How many of those jurisdictions did you
13 sit for a bar examination?

14 A. Three.

15 Q. How long did -- which was the first of
16 those three?

17 A. State of Maryland.

18 Q. Did you study for the bar for the State
19 of Maryland?

20 A. I did.

21 Q. How long did you study for?

22 A. I guess six weeks. You finish law
23 school in June and you take it in July.

24 Q. So can we agree there wasn't a six week
25 period of time between Ms. Fischman's termination

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2 from Mitsubishi and the February bar exam?

3 A. True.

4 Q. And do we agree there's an additional
5 period of time after the bar exam is administered
6 before an attorney is actually licensed by being
7 admitted to the bar?

8 A. Generally, yes.

9 Q. The second bar exam that you took, did
10 you study for that bar exam?

11 A. It was the following days of the
12 Maryland bar so it would be the same answer.

13 Q. So six weeks to study?

14 A. More or less. It was contemporaneous
15 with the State of Maryland.

16 Q. With respect to the third bar exam you
17 took, did you study for that one?

18 A. A little bit.

19 Q. What's a little bit?

20 A. I was a practicing attorney so at night
21 after working all day and taking care of any
22 other obligations, I cracked back open the MDR
23 book -- or whatever books they were -- I forgot
24 the acronym -- but the state books.

25 Q. Is it fair to say that sitting for the

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2 bar exam requires a significant degree of
3 studying?

4 A. So I can't agree with your qualification
5 of significant. It requires study. And, again,
6 you know Ms. Fischman being a licensed attorney
7 has experience in the law, has a leg up on the
8 students who never practiced up.

9 Q. Let's ask a different question. I asked
10 you before what the earliest date that Ms.
11 Fischman's --

12 MS. BERMAN: Withdrawn.

13 Q. I asked you before whether you included
14 any --

15 MS. BERMAN: Withdrawn.

16 Q. When was the first date that Ms.
17 Fischman could have satisfied the requirements
18 for admission to the New York Bar and actually
19 been admitted?

20 A. Any time since she started practicing
21 for Mitsubishi in New York. From March of 2008
22 she could have -- at any point in time she could
23 have sat for the bar and taken the bar exam.

24 Q. Let me ask the question differently
25 then.

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2 When is the first point in time after Ms.
3 Fischman was terminated from Mitsubishi when she
4 could have been admitted to the New York Bar?
5 A. Assuming no reciprocity and that it
6 would require the full sitting for the bar --
7 which I'm not sure it does. But to answer your
8 question, if one sits for the bar, I imagine she
9 would have likely had to take the July of 2017
10 bar and would have been admitted in the fall of
11 '17.

12 Q. Isn't it correct that you included job
13 opportunities requiring New York State licensing
14 from before that period of time when she could
15 have been admitted to the New York Bar after
16 being terminated from Mitsubishi?

17 A. Yes.

18 Q. And didn't you do the same with respect
19 to the State of New Jersey?

20 A. Yes. Because I do not view the
21 licensure requirement as a limitation to her
22 seeking opportunities that would otherwise -- her
23 ability and the needs of the employer.

24 Q. Your view is based upon your opinion,
25 correct?

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2 MS. PRIMAVERA: Objection.

3 A. True.

4 Q. That's based upon your opinion as a
5 labor economist, is that right?

6 A. My opinion based upon my experience as a
7 labor economist, a lawyer for 20 years knowing
8 that the requirement of a bar licensure would not
9 prevent a candidate, otherwise more qualified,
10 from seeking employment from a specific employer.
11 That is if the employer finds the right match,
12 there are workarounds for the licensure issue,
13 such as we just discussed here, taking the bar.

14 Q. You're not testifying as an expert
15 lawyer, correct?

16 A. I'm not -- well, I'm not giving a legal
17 opinion -- I'm not being retained to offer a
18 legal opinion. I'm being offered to offer my
19 opinions with regard to the labor market for a
20 lawyer, Ms. Fischman, and that's calling upon my
21 experience as a labor economist and a lawyer for
22 over 20 years. I don't know if I can parse the
23 two out. I'm not being called to talk about the
24 legal obligations but the problematic obligations
25 as a license attorney who has experience since

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2 1996.

3 Q. You've been a licensed attorney for

4 20 years, right?

5 A. Yes.

6 Q. In your 20 years have you hired other

7 attorneys?

8 A. I have, yes.

9 Q. In your 20 years have you ever even once

10 hired an attorney who wasn't licensed in your

11 state?

12 A. Yes.

13 Q. What were circumstances surrounding that

14 decision?

15 A. That the attorney that was hired for the

16 project that was going forward -- even in our

17 state didn't need to have the state license.

18 Q. So that was in a state where that work

19 wasn't required to be work licensed?

20 A. No, the projects that this person was

21 being hired for didn't require -- they're a

22 licensed attorney but they weren't filing papers

23 on behalf of third-parties in that specific state

24 so they weren't, I guess, representing or doing

25 legal pleadings in that state.

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2 Q. So they weren't practicing law in that
3 state, correct?

4 A. For that project, correct.

5 Q. Have you ever hired a lawyer to practice
6 law in your state who wasn't licensed in your
7 state?

8 A. One of the firms I worked at before
9 joining my current employer did, yes. And then
10 those individuals sat for bar or seek
11 reciprocity.

12 Q. Again, that wasn't what I asked you but
13 okay.

14 MR. BERMAN: It's 1:37, would you like
15 to take a lunch break now?

16 MS. PRIMAVERA: How much longer do you
17 have around?

18 MR. BERMAN: I'm going to keep going. I
19 don't know how long it will take. We have
20 him for four hours is my understanding.

21 MS. PRIMAVERA: It's up to you, Mr.
22 Staller.

23 THE WITNESS: Let's take a 10 minute
24 break and then we'll continue.

25 MR. FORTINSKY: Let's come back at 2:00

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2 to keep it even.

3 (Whereupon, a luncheon recess was

4 taken.)

5 Q. Can you pull up the expert report and
6 turn to page four.

7 Mr. Staller, I am directing you to page four
8 of your expert report. Is it fair to say in this
9 section of the report you identify what you
10 consider to be the elements of a reasonable and
11 diligent job search?

12 A. What I identify and the State of New
13 York identify.

14 Q. Along those lines, in the second
15 sentence of the first paragraph you put in your
16 report the following statement, "To continue to
17 receive unemployment benefits in New York, the
18 unemployment recipient must, at a minimum,
19 perform three work search activities per week."

20 Do you see that statement?

21 A. Yes.

22 Q. Do you know whether Ms. Fischman applied
23 for unemployment benefits?

24 A. I don't know if I ever saw her tax
25 returns. I don't think I ever saw her tax

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2 returns.

3 Q. I didn't ask you about her tax returns.
4 I asked you whether you know if she applied for
5 unemployment benefits?

6 A. The receipt of unemployment benefits if
7 she did receive them would be identified on her
8 tax returns so that would be a source for me as
9 an economist to verify receipt of such benefits.
10 The application without seeing her tax returns, I
11 don't know.

12 Q. Aren't there other documents that would
13 reflect whether she received unemployment
14 benefits or applied for unemployment benefits
15 other than tax returns?

16 A. You could have shared her bank
17 statements. If she did get it, there would be
18 direct deposits. There are other financial
19 sources from Ms. Fischman that you could have
20 provided that would allow me to verify that.

21 Q. Sitting here today do you know whether
22 Ms. Fischman applied for unemployment benefits?

23 A. I don't know.

24 Q. Do you know whether she received
25 unemployment benefits?

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2 A. Based on your last question and my last
3 answer, obviously, I don't know.

4 Q. Thank you. And you've been an attorney
5 for 20 years you said, correct?

6 A. True.

7 Q. Did you litigate cases?

8 A. Yes.

9 Q. Did you conduct discovery?

10 A. Yes.

11 Q. In discovery did you call for production
12 of tax returns?

13 A. Depending on the claim.

14 Q. Do you know whether generally speaking
15 tax returns are discoverable?

16 A. Generally -- well, again, it's
17 depending -- it's a very broad question because
18 from the employment cases that I worked on, yes,
19 they were discoverable.

20 Q. Do you know what the rule is concerning
21 the discoverability of tax returns?

22 A. What the rule is?

23 Q. Yes. Do you know what the rule is?

24 A. I currently don't know what the rule in
25 the Second Circuit is on the production of tax

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2 returns.
3 Q. Turning to third paragraph on this page.
4 Do you see where it says, "According to recent
5 articles for an individual who is not working a
6 reasonable target for the amount of time to spend
7 when searching for a full-time job is anywhere
8 from 25 to 40 hours per week."

9 Do you see that statement?
10 A. Yes.
11 Q. What forms the basis for that statement?
12 A. Footnote 20.
13 Q. So you're referring to the two citations
14 in footnote 20?
15 A. Yes.

16 Q. Is there any other basis for the
17 statement other than the sources cited in
18 footnote 20?

19 A. I've had conversations -- not in this
20 particular matter with Ms. Wexler -- but over the
21 years I've spoken with Ms. Wexler in other
22 employment matters and she's reiterated that
23 concept that from an employability standpoint
24 similar to what's identified in those articles
25 that the work of the employee or separated

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2 individual is to find work. So that's -- I've
3 had that conversation with Ms. Wexler.

4 On the US Department of Labor website
5 over the years there's been a discussion on
6 efforts of job seekers that's been identified
7 similar to those figures on the US Department of
8 Labor website.

9 Q. Any other sources that support your
10 contention 25 to 40 hours a week is a reasonable
11 target for the amount of time for person who is
12 not working to search for a full-time job?

13 A. It would be what we just discussed and
14 then I've had other conversations with other
15 employability professionals over the years that
16 offer the same findings.

17 Q. Are you aware of any other articles that
18 support that contention?

19 A. Articles would be then -- the only one
20 would be this US Department of Labor handbook
21 they have -- it actually used to be posted on the
22 New York Department of Labor website. I don't
23 know if it currently is.

24 Q. Are you relying upon those materials in
25 support of this contention?

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2 A. Not outside of footnote -- well, it just
3 corroborates -- you asked for all the information
4 I had supporting that statement. So to answer
5 that question, the primary sources would be
6 footnote 20 as well as the additional information
7 I just provided.

8 Q. As an expert, your understanding is
9 you're supposed to present the information that
10 you're relying upon within your written report,
11 correct?

12 A. True.

13 Q. So is there anything in this written
14 report other than information in footnote 20 that
15 you're relying upon in support of this opinion?

16 A. No. Again, your question was "any other
17 sources." So additional sources, which we would
18 reiterate the same findings as properly cited on
19 footnote 20, would be my conversation with Ms.
20 Wexler and the US Department of Labor guide, as
21 well as speaking to other employability experts.

22 But as far as my opinions are contained
23 right here on page four, are fully cited. To
24 answer your question to the full extent, that's
25 the answer.

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2 Q. How did you identify these articles that
3 you selected for footnote 20?

4 MS. PRIMAVERA: Objection.

5 A. I don't understand that question.

6 Q. Well, how did locate the first of these
7 two articles, the balancecareers.com article,
8 "How much time to spend on a job search"?

9 A. Sitting here today I don't recall.

10 Q. How did you come across or how did you
11 identify the second of those two; the
12 Iamdiversity.com article, "How much time should
13 you spend on your job search"?

14 A. Sitting here today, I don't recall.

15 Q. Generally speaking, if you wanted to
16 answer the question of how much time is
17 appropriate to spend when conducting a full-time
18 job search for a person who is not working, how
19 would you answer that question?

20 A. (No verbal response.)

21 Q. To clarify, how would you go about
22 answering that question?

23 MS. PRIMAVERA: Objection.

24 Q. Do you understand my question?

25 A. Now that you rephrased it, can you ask

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2 it in one coherent question and then I can answer
3 it.

4 Q. If you wanted to answer the question of
5 how much time is appropriate for a person who is
6 unemployed to spend seeking a full-time job, how
7 would you go about learning the answer to that
8 question?

9 MS. PRIMAVERA: Objection.

10 A. Of the topic with employability experts,
11 other individuals, maybe such as headhunters;
12 independent research, such as the US Department
13 of Labor guide and then doing various searches to
14 see what type of information comes about on that
15 topic.

16 Q. Where would you conduct the various
17 searches you just described?

18 A. You can look at various state web sites.
19 Some states have more -- the information, such as
20 New York Department of Labor used to post the US
21 Department of Labor guide, which would talk about
22 this topic. Other states give some specificity
23 to this so the various states' Departments of
24 Labor. Employability web sites from various
25 practitioners, conversations with employability

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2 experts. And then if you want you can always do
3 an initial Google search to see what topics or
4 articles come up from various publications.

5 Q. Did you do a Google search to answer
6 this question?

7 A. Did I?

8 Q. Yes.

9 A. You already asked that question and I
10 said I don't recall.

11 Q. I didn't ask you that before.

12 A. No.

13 Q. Did you just answer the question?

14 A. True, I don't recall.

15 Q. So you the recall whether you did a
16 Google search?

17 A. To find these articles or to do what?

18 Q. Did you do a Google search to find these
19 articles?

20 A. I don't recall.

21 MS. BERMAN: Toni, let's pull up an
22 exhibit I e-mailed to you entitled "How much
23 time should you spend on your job search."

24 Let's mark this as an exhibit, Staller
25 Exhibit 3.

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2 (Staller Exhibit 3, marked for
3 identification.)

4 Q. Mr. Staller, I will represent to you
5 this is a PDF of the Google results that I
6 obtained when I plugged into the search bar, "How
7 much time should you spend on your job search?"
8 Do you see the first result at very top of
9 the page?

10 A. The first result being?

11 Q. It says, "Plan around 20 to 25 hours a
12 week."

13 A. I think the result would -- I don't know
14 if you would call it a result but okay.

15 Q. Can we agree that's the same source
16 "Iamdiversity.com" that you got this article in
17 footnote 20 from?

18 A. I can't say that's the same article but
19 that's the same source, I can agree with that --
20 that's the same web page.

21 Q. Same source.

22 MR. BERMAN: Toni, if you can scroll
23 down to the next result.

24 Q. "How much time should you spend on a job
25 search?" Do you see above that bar it says

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2 www.thebalancecareers.com?

3 A. Yes.

4 Q. That's the same source as the other

5 article in footnote 20, correct?

6 A. The same source, yes.

7 Q. So did you just Google these two

8 articles?

9 MS. PRIMAVERA: Objection.

10 A. I still don't recall from five minutes

11 ago.

12 Q. Do you know whether these are peer

13 reviewed sources?

14 A. I don't know.

15 Q. Do you know whether they are recognized

16 within the field of labor economists -- labor

17 economics?

18 A. I don't know.

19 Q. Do you know whether they're scholarly

20 researched?

21 A. I don't know.

22 Q. Do you have any basis from which you can

23 ascertain whether these sources are reliable?

24 A. I have to look at the articles I pulled.

25 I don't know sitting here.

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2 Q. Doesn't this article indicate that if I
3 wanted to know the answer to the question of how
4 long an individual who is not working should
5 spent speak seeking a full-time job, I can just
6 Google it?

7 MS. PRIMAVERA: Objection.

8 A. I don't understand -- your question is
9 confusing. Can you restate it?

10 MR. BERMAN: Can you read back the
11 question, Toni.

12 (Whereupon, last question read back.)

13 A. It sounds to me the question is
14 mis-worded. I can't answer that question.

15 Q. The Google search results that you see
16 on the screen here, don't they reflect that I, as
17 a labor person, got the same answer you got just
18 by Googling the question?

19 MR. FORTINSKY: Objection to form.

20 A. I don't know you got the same results.
21 Right now you just showed the front page of a
22 Google search. I don't know if those are the
23 same articles.

24 Q. I'll represent to you they're the same
25 articles.

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2 A. Mr. Berman, when we started the
3 deposition at 11:00 you went through some rules
4 and those rules are pretty common in depositions,
5 especially on Zoom, it makes it a lot easier for
6 the court reporter and for me if we don't talk
7 over each other. Multiple times today you
8 interrupted my answer and it messes up my train
9 of thought and it makes the record not clear.
10 I'm sure you're trying to get a clear record as
11 I'm trying to give clear testimony.

12 If you can be so kind just to let me
13 finish my answers and if you have follow-up
14 questions, you paid for four hours and I'm happy
15 to be here for four hours. I'm not going to rush
16 you, just don't rush me and think we can get a
17 better transcript.

18 Q. Thank you, Mr. Staller. I will do my
19 best. I'm a New Yorker and I do have a tendency
20 to interrupt. I apologize and will try to limit
21 that.

22 A. I don't want to guess that you're a New
23 Yorker. It's a big population.

24 Q. Thank you, sir.

25 A. But I didn't get to answer my last

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2 question, you cut me off. If we can read the
3 last question back, I would like to continue my
4 answer.

5 Q. That's fine.

6 MR. BERMAN: Toni, please read it back.

7 (Whereupon, requested portion of
8 testimony read back.)

9 A. So what's presented here on exhibit --
10 the current exhibit -- I don't know what exhibit
11 it is.

12 Q. Plaintiff's Exhibit 3?

13 A. Exhibit 4?

14 Q. Plaintiff's Exhibit 3.

15 A. Thank you. From plaintiff's Exhibit 3,
16 I can't say yes or no because this is just the
17 front page from what I appears to be a PDF
18 snapshot of a Google search. I can't say yes or
19 no.

20 Q. Do you know who authored the article you
21 referenced on the Balance Careers web page?

22 A. Not off the top of my head, no.

23 Q. Do you know whether that article was, in
24 fact, was authored by a human being?

25 A. Not off -- I have to look at the

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2 article -- but not off the top of my head.

3 Q. If that article --

4 MS. BERMAN: Withdrawn.

5 Q. Do you though with that article was

6 authored by AI?

7 A. I have to look at the article. I don't

8 know.

9 Q. You understand when I use the term AI, I

10 mean artificial intelligence, correct?

11 A. That's what I assumed when you were

12 using the acronym, AI.

13 Q. What about with respect to the other

14 article on Iamdiversity.com, do you know whether

15 that article was authored by a human being?

16 A. Without looking at the full article, off

17 the top of my head, I don't know.

18 Q. Do you know whether it was authored by

19 artificial intelligence?

20 A. Again, without looking at the full

21 article off top of my head, I don't know.

22 Q. Do you have the full article in your

23 possession?

24 A. Let me see if I do. I can take a look.

25 Q. Are you reviewing one of the articles?

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2 A. I'm looking for it.

3 Q. Okay.

4 A. It appears that the article, how much
5 time should you spend on job a search was
6 written -- again, I've never met Allison Doyle
7 but identifies -- it appears that she's not a
8 computer or artificial intelligence. It appears
9 Ms. Doyle is one of the industry's most highly
10 regarded job search and career experts.

11 Q. When you say she's one of the industry's
12 most highly regarded job search experts, what do
13 you base that on?

14 A. The overview of her looking at her
15 background and experience off of the Balance
16 Careers website.

17 Q. So it's just based on upon what's on
18 this piece of paper?

19 MS. PRIMAVERA: Objection.

20 A. I don't know which piece of paper you're
21 referring to.

22 Q. The article that you're looking at.

23 A. So, no, off the article it says you can
24 click on her picture to get more information on
25 her. So it's just not off the article itself,

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2 it's now coming off what it appears by her
3 biographical background.

4 Q. You don't have any independent knowledge
5 about her level of expertise do you?

6 A. I don't have independent knowledge of
7 Ms. Doyle's expertise, no.

8 Q. You don't recognize her as an expert in
9 her field of study, do you?

10 MS. PRIMAVERA: Objection.

11 A. Do I recognize her as an expert?

12 Q. Yes.

13 A. In job search activities based upon her
14 article, yes.

15 Q. So based upon her article you came to
16 that conclusion, correct?

17 A. Her article and her biography as
18 available on the balancecareers.com.

19 Q. Do you have any other independent basis
20 for making that assessment?

21 A. No.

22 Q. With respect to the article on
23 Iamdiversity.com, do you know was the author of
24 that article?

25 A. Let me check. It appears it was

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2 authored -- again, it appears to be an actual
3 human being -- Sean McGuigan, M-C-G-U-I-G-A-N.

4 Q. Do you have any independent basis for
5 the statement that that person identified is, in
6 fact, a live human being?

7 A. I mean, I've never taken the person's
8 temperature but based upon the representation on
9 the website that it's authored by a person with a
10 first name and last name, I've accepted it's
11 authored by a real person.

12 Q. So you don't have an independent basis
13 for making that determination, do you?

14 A. Outside of this article, I've never met
15 Mr. McGuigan.

16 Q. Are you aware of Mr. McGuigan being an
17 expert in your field of study?

18 A. In my field of study?

19 Q. Yes.

20 A. I have not seen Mr. McGuigan's
21 biography.

22 Q. Do you have any other independent
23 awareness of this person, if it is, in fact, a
24 person, their level of expertise in any field?

25 A. Not outside of this article.

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2 Q. Thank you. Turning back to Balance
3 Careers article for a moment -- do you have that
4 in your possession, correct?

5 A. Yes.

6 Q. That article is dated June 7, 2020,
7 correct?

8 A. Yes.

9 Q. Do you see the second paragraph of that
10 article from where it begins there is no right or
11 wrong answer for or set amount of time?

12 A. Yes.

13 Q. Do you factor that into your opinion as
14 to whether a full-time job search should be from
15 25 to 40 hours peer week?

16 A. Yes. Again, this article -- you have to
17 read the article in its totality. Right, I do
18 see that one sentence. In a broader context, I
19 do factor it in, yes.

20 Q. Moving on. Back to the expert report,
21 please.

22 MR. BERMAN: Let the record reflect
23 we're looking at page five of the expert
24 report.

25 Q. Sir, I would like to direct your

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2 attention to the top portion of the page where it
3 says, Section V, "Relevant Employment and
4 Unemployment Statistics."

5 Do you see where I'm directing your
6 attention?

7 A. Yes.

8 Q. Okay. So Table B, listed below the
9 first paragraph there, is entitled "Duration of
10 unemployment, January of 2017."

11 Do you see where I'm looking?

12 A. Yes.

13 Q. How did you use the data in this table
14 to formulate your opinion in this matter?

15 A. As discussed earlier today, this labor
16 market data is the broader soft (sic) of what
17 the marketplace looked like based upon various
18 demographic criteria similar to Ms. Fischman for
19 what we would have expected for Ms. Fischman to
20 get re-employed or to what would be a reasonable
21 period of time.

22 So, again, this data I take as part of
23 foundational information I used to form my
24 opinions about whether her search was reasonable
25 and diligent and this would be the economic labor

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2 market statistics that indicate people that are
3 separated from employment based upon the criteria
4 in the category column were able to get
5 reemployed relatively quickly as compared to what
6 Ms. Fischman did.

7 Q. Have you completed your answer?

8 A. I have.

9 Q. Is it fair to call what you just
10 described a methodology?

11 A. I don't know if I would call it a
12 methodology or more as underlying relevant
13 economic data that's applied in my analysis.

14 I'm not sure what part would be
15 methodology.

16 Q. Okay. I think you just said that you
17 applied the data to the methodology, did I get
18 that right?

19 A. This is one of the data piece that goes
20 into my analysis which forms my conclusions, yes.

21 Q. If I refer to the phrase application of
22 the duration of unemployment data, can we agree
23 that that's the process that you just described
24 or is there something else we should call it?

25 A. (No verbal response.)

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2 Q. I'm just looking for a term that we can
3 use to refer back to the process you just
4 described.

5 A. The term would be doing relevant
6 economic research and then to gather information
7 than can then be applied to the specifics of a
8 case, such as Ms. Fischman's, and the specifics
9 of Ms. Fischman's situation. I don't know if
10 there's one simple term that covers all of that.

11 Q. For the sake of this particular
12 conversation, can we just label this with the
13 term "a process," so we know what we're talking
14 about; is that fair?

15 A. So just -- I don't mind simplifying it
16 but the process of doing research to come -- to
17 get data that can be applied later on.

18 Q. Can we call that a research process
19 then? What are you comfortable referring it to
20 so I don't have to say a full paragraph each time
21 I ask you about it?

22 A. I would be comfortable calling this the
23 research process with regard to unemployment
24 statistics.

25 Q. That's fine. I'll try to remember that

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2 term. The research process -- what was the rest
3 of it?

4 A. Applied to unemployment statistics.

5 Q. Did you use this research process
6 applied to unemployment statistics in previous
7 expert reports?

8 A. Yes.

9 Q. Has your use of that research process
10 applied to unemployability statistics ever
11 challenged on a motion to exclude?

12 A. I don't know.

13 Q. Do you know whether any Federal court
14 has excluded expert testimony on the basis of the
15 research process applied to unemployment
16 statistics that you just identified?

17 A. Any Federal court in any case, is that
18 your question?

19 Q. For now, yes.

20 A. I don't know.

21 Q. Do you practice law in the Federal
22 District of the Eastern District of Pennsylvania?

23 A. Do I practice law there?

24 Q. Yes, sir.

25 A. I was licensed there. I haven't

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2 practiced law since 2005.

3 Q. Do you know whether any Federal court in
4 the Eastern District of Pennsylvania has excluded
5 expert testimony on the basis of a research
6 process applied to unemployment statistics of the
7 kind you just identified?

8 A. I don't know.

9 Q. Are you familiar with the case of
10 Speights, S-P-E-I-G-H-T-S versus Arsens,
11 A-R-S-E-N-S, Home Care, Inc.?

12 A. Yes.

13 Q. Does that refresh your recollection as
14 to whether any Federal court has excluded expert
15 testimony on the basis of the research process
16 applied to unemployment statistics?

17 A. In the matter of Speights v Arsens?

18 Q. Correct.

19 A. I'm familiar with that case as I was the
20 defense economist in that case. To my
21 recollection, the Eastern District Federal Court
22 permitted based upon a motion in limine or a
23 Daubert challenge the complete analysis,
24 including this process, with the one limitation
25 that I could not simply talk about the ultimate

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2 opinion of failure to mitigate. But other than
3 that, all other opinions and analysis were deemed
4 permissible.

5 Q. That's your understanding of the
6 decision in Speights versus Arsens Home Care,
7 Inc.?

8 A. Yes.

9 Q. Are you aware of whether the Court in
10 that matter considered the use of the forensic
11 job stats database?

12 A. I know used it in that matter and I --
13 after speaking to that attorney, who I was
14 retained by, I knew I can -- would be able to
15 testify to it. I don't know if -- the legal
16 opinion.

17 Q. Do you know whether the use of the
18 forensic job stats database was permitted by the
19 Court in that matter?

20 A. To the best of my understanding, it was.
21 But, again, my understanding had one limitation.
22 That's my understanding.

23 Q. That's your understand in the decision
24 in Speights versus Arsens Home Care?

25 A. Yes.

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2 Q. Have you reviewed the case?

3 A. No.

4 Q. Have you reviewed any cases that allowed
5 the use of the forensic job stats database?

6 A. I testified to it in other cases. I
7 haven't done a search with regard -- a legal
8 search with regard to the use.

9 Q. Are you aware of any Federal case
10 anywhere in United States at any time that
11 allowed the use of the forensic job stats
12 database when challenged on a motion to exclude?

13 A. I don't know.

14 Q. In that case was your expert report
15 prepared by you and Steven Dripps?

16 A. Which case are you referring to now?

17 Q. The Speights versus Arsens Home Care
18 case?

19 A. I believe Mr. Dripps cosigned that
20 report, yes.

21 Q. That was prepared by the Center For
22 Economic Studies, correct?

23 A. Yes.

24 Q. Do you know whether that case considered
25 the legal standard applicable to a Daubert

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2 motion?

3 MS. PRIMAVERA: Objection.

4 A. I didn't testify at a Daubert hearing.

5 It might have been a paper filing on a Daubert
6 challenge.

7 Q. Are you familiar with the requirement of
8 Federal rule of evidence 702?

9 A. I don't have it memorized, no.

10 Q. Are you familiar with the case of
11 Patrulio versus Teleflex, Inc.?

12 A. The case sounds familiar but I don't
13 have a memory of it sitting here.

14 Q. What about the case of Roger versus
15 McCaul?

16 A. I'm not familiar with that case.

17 Q. What about the case Costullcio versus
18 International Business Machines, Corp.?

19 A. I'm not familiar with that case.

20 Q. Do you know whether any court has
21 excluded a testifying expert's testimony
22 concerning the reasonableness and diligence of a
23 plaintiff's job search efforts?

24 A. Can I hear the question back.

25 MR. BERMAN: Can you read it back, Toni.

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2 (Whereupon, last question read back.)

3 A. So I have seen in cases and my
4 understanding from speaking to the attorney as
5 retained by the Speights matter, I've seen a
6 limitation of experts not being able to give an
7 ultimate opinion of the plaintiff has failed to
8 mitigate with that ultimate statement being
9 provided. But otherwise, I have testified to and
10 been permitted to testify to the efforts of the
11 plaintiff without giving the ultimate opinion.

12 Q. In your expert report that's presented
13 here, aren't you given the ultimate opinion as to
14 plaintiff's reasonableness and diligence of their
15 job search?

16 MS. PRIMAVERA: Objection.

17 A. I'm putting forth this statement that,
18 again, based upon Ms. Fischman's reported job
19 search efforts, relevant labor market data, data
20 specific to the MSA we've already discussed, that
21 when you put all that together that her efforts
22 were not reasonable and diligent. I do not put
23 forth opinion that she failed to mitigate. It's
24 my understanding that would be the ultimate
25 determination for the trier of fact.

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2 And I testified to these findings in
3 other matters without giving the ultimate
4 opinion. And my understanding in that Speights
5 matter was as permitted to testify -- the case
6 settled, so it did not get into the courthouse --
7 but in Speights the limitation was I would not be
8 able to testify to ultimate opinion as failed to
9 mitigate but I can discuss the efforts and the
10 labor market for Ms. Speights similar to Ms.
11 Fischman.

12 Q. Are you aware, sir, your expert report
13 was excluded in part in the matter of Speights
14 versus Arsens Home Care?

15 A. Yes, I just discussed that with you. In
16 that case my report did have the language "failed
17 to mitigate" and I was not permitted to testify
18 to that statement of a failure -- has failed to
19 mitigate.

20 Q. Are you aware, sir, that your testimony
21 concerning the plaintiff's reasonable and
22 diligence was also excluded?

23 A. I'm not aware of that, no.

24 Q. Are you aware that your use of the
25 forensic job stats database was excluded?

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2 A. I'm not aware of that.

3 Q. Are you aware that the Court found your
4 report did not provide information regarding the
5 reliability of that database?

6 A. I'm not aware of that.

7 Q. Are you aware the Court found that there
8 is also no explanation of how the experts used
9 the information from forensic job stats in
10 reaching the conclusion that plaintiff should
11 have found a job in six months or how many jobs
12 must appear in the database to support the
13 conclusion that there were plentiful job
14 opportunities?

15 MS. PRIMAVERA: Objection.

16 A. I'm not aware of that.

17 Q. Do you know whether within the Southern
18 District of New York a testifying expert may
19 opine as to whether a job candidate's search was
20 reasonable or diligent?

21 A. Not off the top of my head. I don't
22 know the legal stance.

23 Q. Do you know whether within the Southern
24 District of New York a testifying expert may give
25 testimony concerning the amount of time a

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2 plaintiff can be expected to find a job within?

3 THE WITNESS: Repeat the question, madam

4 court reporter -- can you read it back.

5 (Whereupon, last question read back.)

6 A. That calls for a legal opinion in the
7 Southern District. I don't know off the top of
8 my head.

9 Q. So you don't know the answer, correct?

10 MS. PRIMAVERA: Objection.

11 A. True, not off the top of my head.

12 Q. Do you know whether your own testimony
13 on those two questions has previously been
14 excluded in the Southern District of New York?

15 A. I'm aware of one matter in the Southern
16 District of New York where I was permitted to
17 testify to the mitigation efforts and data with
18 one limitation, that there was one opinion of six
19 or seven within that report that I was not
20 permitted to testify to based upon a lack of -- I
21 believe, the opinion said proper citation for the
22 data source.

23 Q. Have you completed your response?

24 A. Now I have, yes.

25 Q. What matter are you referring to?

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2 A. Yang v. Navigators.

3 Q. Okay. And in Yang v. Navigators did you
4 give an opinion concerning how long it should
5 have taken for the plaintiff to find comparable
6 employment?

7 A. I provided several opinions with regard
8 to the efforts of the plaintiff and the
9 mitigation efforts of the plaintiff. I just
10 don't recall the opinions.

11 Q. So sitting here today you don't know
12 whether one of your opinions concerned how long
13 it would be expected for it to take for the
14 plaintiff to find employment?

15 MS. PRIMAVERA: Objection.

16 A. That's a -- can you restate the
17 question. I don't understand it as worded.

18 Q. Didn't the Court exclude your opinion
19 concerning how long it would have taken the
20 plaintiff to find employment?

21 A. In the Yang matter?

22 Q. Yes, sir.

23 A. I would have to read the Court's opinion
24 again. I do not believe I was permitted to
25 testify as a labor economist to every opinion in

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2 my report except the one. And I believe the
3 opinion only precluded that based upon what I
4 perceived failure to provide a citation to a data
5 source.

6 Q. Did you read the opinion?

7 A. When it was issued six or seven years
8 ago.

9 Q. If a court told you that your testimony
10 was excluded, would you offer again within the
11 same jurisdiction?

12 MS. PRIMAVERA: Objection.

13 A. Again, my exclusion on that one opinion,
14 I was permitted to testify in the Southern
15 District on all the issues of that plaintiff's
16 mitigation issues with the exception of one
17 opinion with regard to a data source that the
18 Court perceived was not properly footnoted.
19 However, it was however was properly cited in my
20 report -- it was fully cited in my report. It
21 wasn't based upon the opinion itself. The Court
22 in that matter found there was a lack of
23 citation -- which there was citation, for the
24 record.

25 Q. In that matter didn't you compare the

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2 plaintiff there to any employee of the age of 25?

3 MS. PRIMAVERA: Objection.

4 A. I don't recall. The matter was, I
5 think, six or seven years ago.

6 Q. Didn't you compare the plaintiff's job
7 search to the New Jersey guidelines for
8 unemployment benefits?

9 MS. PRIMAVERA: Objection. The witness
10 testified that he doesn't recall the
11 opinion.

12 A. I don't -- I still don't recall
13 specifics on that besides the one limitation and
14 all their opinions were permissible.

15 Q. In the Speights matter where you used
16 the research process applied to unemployment
17 statistics, did you look at the category of all
18 workers?

19 MS. PRIMAVERA: Objection.

20 A. I don't recall.

21 Q. Did you look at category of women age 45
22 to 54?

23 A. I don't recall.

24 Q. Your report here looks at those two
25 categories, correct?

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2 A. In addition to two others, yes.

3 Q. Those two others being the management
4 professional and related occupations category,
5 number one; and the manufacturing category,
6 number two, correct?

7 A. Yes.

8 Q. What's included within the management
9 professional and related occupations category?

10 A. I have to go back and look at the DOL
11 footnote. Sitting here I don't recall all the
12 subcategories or all the job codes within them.

13 Q. Have you completed your answer?

14 A. I have.

Q. Do you know whether it includes doctors?

16 MS. PRIMAVERA: Objection.

17 A. As I just said, I would have to go back
18 and look at the subclassifications, which I
19 haven't memorized here.

Q. Setting aside whether you memorized it,
do you know whether it includes doctors?

22 MS. PRIMAVERA: Objection; asked and
23 answered.

Q. That's a "no," right?

25 MS. PRIMAVERA: Objection. You can

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2 answer if you understand the question.

3 Can you read back the last question,
4 please.

5 (Whereupon, last question read back.)

6 A. I would have to look at the source.

7 Q. What about dentists?

8 A. I have to, again, look at the
9 classifications within the broad category. I
10 don't know that I still have it memorized.

11 Q. This category includes professionals,
12 correct?

13 A. It does.

14 Q. Doctors are professionals, correct?

15 MS. PRIMAVERA: Objection.

16 A. Deemed as a professional with a
17 professional degree, yes.

18 Q. So are dentists, correct?

19 A. That's my understanding, yes.

20 Q. And so are dental hygienists, correct?

21 MS. PRIMAVERA: Objection.

22 A. I don't know if dental hygienists are
23 treated as professionals. I would have to,
24 again -- I don't know what source you're using to
25 define that.

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2 Q. What about engineers?

3 MS. PRIMAVERA: Objection.

4 A. Engineers -- engineers I think are
5 typically classified as professionals, yes.

6 Q. What about teachers?

7 MS. PRIMAVERA: Objection.

8 A. From a traditional standpoint, teachers
9 are not defined as professionals.

10 Q. What about real estate brokers?

11 MS. PRIMAVERA: Objection.

12 A. Typically -- again, it depends on which
13 classification. Typically professionals are
14 limited to individuals who possess a professional
15 degree, which would be juris doctorate, an MD --
16 maybe a DO, and I believe engineers.

17 Q. And management is also included in this
18 category, correct?

19 MS. PRIMAVERA: Objection.

20 A. Which category, professional?

21 Q. No, this category you utilized;
22 management, professional and related
23 qualifications?

24 A. Management is part of this category,
25 yes.

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2 Q. And what is management comprised of?

3 MS. PRIMAVERA: Objection.

4 A. Without having memorized the specific
5 definition, typically the individuals that have
6 managerial capacity would be defined as oversight
7 of other employees.

8 Q. In this matter you relied upon the
9 forensic job stats database, correct?

10 A. In the last 15 minutes we discussed
11 multiple matters. When you say "this matter,"
12 what matter are you referring to?

13 Q. In your expert report, it's he relying
14 on the job stat database, correct?

15 A. My expert report in Ms. Fischman's case?

16 Q. Yes.

17 A. Yes.

18 Q. Do you know where forensic job stats
19 gets its data from?

20 A. Yes. It's --

21 Q. Is your answer still in process?

22 A. Yes. It's -- I think it's like the
23 teletron database -- I'm pronouncing it
24 incorrectly -- but I do, yes.

25 Q. Sir, are you referring to reference

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2 materials during your testimony now?

3 A. I'm looking at my report.

4 Q. Are you looking at any other reference
5 materials?

6 A. No.

7 Q. Have you taken any steps to consider the
8 reliability of the data within the forensic job
9 stats database?

10 MS. PRIMAVERA: Objection. You can
11 answer.

12 A. Only to the extent it's -- I look at the
13 published job postings. That will be the extent
14 of my investigation.

15 Q. Do you have any other independent basis
16 to ascertain the reliability of the data within
17 forensic job stats database?

18 MS. PRIMAVERA: Objection.

19 A. As far as reliability in what regard?

20 Q. In the Daubert context, do you
21 understand that reliability is the foundation for
22 the admissibility of expert testimony, correct?

23 MS. PRIMAVERA: Objection.

24 A. Yes.

25 Q. So within that context, have you got any

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2 independent knowledge that you can use to
3 ascertain the reliability of the data within the
4 forensic job stats database?

5 A. Within the definition of "reliability"
6 as used in the Federal Rules of Civil Procedure,
7 yes -- meaning do these jobs actually --

8 THE REPORTER: I'm sorry, you went out.

9 A. As the term "reliability" within the
10 Daubert context, that will mean different things
11 for different experts and different sources.

12 As I take it as applied to your line of
13 questioning with regard to the ads themselves
14 that are existing to be are they reliable in the
15 sense that they're presenting actual jobs, I have
16 tested the reliability in other matters, meaning
17 did these jobs exist at that time where certain
18 ads that were pulled from the database were then
19 also corroborated by clients that had those
20 postings that were then put on this third-party
21 source, such as Zip Recruiter. As far as test
22 reliability and other matters, as to the
23 existence of those ads at that point in time,
24 yes.

25 Q. Have you tested the existence of any of

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2 the ads in this expert report that you cited?
3 A. I haven't -- no, because I would have to
4 go back to the Mitsubishi ad to look -- but I
5 excluded -- and there were some that came up in
6 this matter -- but I haven't done so to date.

7 Q. Is the forensic job stats database
8 specific to plaintiff's field?

9 A. Ms. Fischman's field?

10 Q. Correct.

11 A. Ms. Fischman as a practicing attorney or
12 corporate counsel?

13 Q. You tell me.

14 A. It's specific based upon what she did
15 for Mitsubishi and based upon the work she
16 identified in her resume.

17 Q. The forensic job stats database is
18 specific to plaintiff's field?

19 MS. PRIMAVERA: Objection.

20 A. So maybe you have a vague question. I'm
21 a glad you're re-asking it because it's probably
22 a bad answer on a bad question.

23 Are you asking does forensic job stats
24 only do lawyers or does it have a database that
25 can query based upon job posts? I need some

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2 clarification.

3 Q. Let's do it this way. What does the
4 forensic job stats database include with respect
5 to the fields or occupations of job hunters?

6 A. Their database is going to be based upon
7 the SOC codes.

8 Q. The SOC codes included within the
9 forensic job stats database include codes for
10 fields outside of Ms. Fischman's field, correct?

11 MS. PRIMAVERA: Objection.

12 A. In addition to the job codes identified
13 relevant to Ms. Fischman, their database has
14 other job codes, yes.

15 Q. What job code did you select with
16 respect to the analysis of Ms. Fischman comparing
17 it to the forensic job stats database?

18 MS. PRIMAVERA: Objection.

19 A. Lawyers, chief executives -- and with
20 the key words general counsel, chief compliance
21 officer, assistant general counsel, corporate
22 counsel.

23 Q. Any others?

24 A. Not for Ms. Fischman, no.

25 Q. Were there any other SOC codes that you

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2 considered and rejected?

3 A. Not for Ms. Fischman, no.

4 Q. Do you know whether the construction of
5 the forensic job stats database is biased in
6 favor of defendants in litigation?

7 MS. PRIMAVERA: Objection.

8 A. I didn't create the database so I have
9 no knowledge of any biases for plaintiff or
10 defense. I didn't create it.

11 Q. Did you take any steps to ascertain
12 whether the database was free from bias?

13 MS. PRIMAVERA: Objection.

14 A. The database based upon the search
15 criteria in Ms. Fischman's case, based upon the
16 criteria you see on page five would be free from
17 bias.

18 Q. Are you familiar with the concept of
19 garbage in, garbage out?

20 A. In what context?

21 Q. In any context.

22 A. I'm familiar in the trash context, when
23 you put trash in a garbage.

24 Q. What about in the context of querying a
25 database?

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2 A. Well -- I'm not sure in the context of
3 querying a database of how you're using that
4 term.

5 Q. Is it fair to say, sir, that the quality
6 of the data extracted from the database is based
7 upon the quality of the data put into the
8 database?

9 MS. PRIMAVERA: Objection.

10 A. Again, that's a really vague and broad
11 question. I can say that the information from a
12 database is going to be driven by what's in the
13 database.

14 Q. In your use of the management
15 professional and related occupations category,
16 did you consider whether any other category would
17 be more appropriate?

18 A. Based upon the Department of Labor's
19 classification -- now we're referring to Table B,
20 correct?

21 Q. Correct.

22 A. So, with regard to the subcategories
23 available, based upon the Department of Labor
24 publication of unemployment data, my attempt with
25 the four presented categories was to provide the

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2 most relevant cuts of the data that existed or
3 that does exist for Ms. Fischman. So that starts
4 with all workers, that's based upon broadly
5 gender and then within the two most refined
6 occupation categories available to Ms. Fischman.

7 Q. Did you consider any other categories
8 and whether they would be more appropriate?

9 MS. PRIMAVERA: Objection.

10 A. No.

11 Q. Do the occupational categories that you
12 just identified in Table B differentiate between
13 employees at different compensation rates?

14 A. In categories -- well, the third row,
15 management, professionals and related
16 occupations, differentiates compared to isolating
17 certain population of the labor force based upon
18 job title, which is then associated with
19 compensation.

20 Q. Have you completed your response?

21 A. I have.

22 Q. Does that category you just identified,
23 management, professional and related occupations
24 include CEOs, chief executive officers?

25 A. I have to, again, look within the

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2 Department of Labor's definition of what's
3 contained in all those -- in a broad title. I
4 don't recall sitting here today.

5 Q. Is there some other management category
6 that chief executives would possibly fall into,
7 other than the management, professionals and
8 related occupations category?

9 A. I would have to look at the Department
10 of Labor site.

11 Q. So sitting here today you don't know
12 whether this category includes chief executive
13 officers, correct?

14 A. True.

15 Q. You don't know whether it includes
16 dental hygienists, correct?

17 A. I don't know sitting here. But again, I
18 don't think within the definition of professional
19 that a dental hygienist would meet that criteria
20 unless the dental hygienist happens to have a
21 doctorate degree.

22 Q. The duration of unemployment information
23 in this table doesn't differentiate between a
24 chief executive and a dental hygienist, does it?

25 A. I don't know because I would have to see

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2 where the hygienist is characterized.

3 Q. What about between a chief executive
4 officer and an engineer?

5 A. An engineer can be a CEO.

6 Q. What about a CEO and a non-CEO engineer?

7 A. Again, CEOs are included within
8 management. As I already answered, I don't know
9 sitting here. I have to look at Department of
10 Labor definition. But if you're asking a
11 hypothetical that they are included, then those
12 would be put together.

13 Q. Wouldn't one expect the compensation
14 rates for CEOs to be differentiated from that of
15 other professionals?

16 MS. PRIMAVERA: Objection.

17 A. So Table B is not measuring
18 compensation, it's measuring how long does it
19 take a person separated from employment to get
20 reemployed.

21 Q. Sure.

22 A. I'm not sure of the relevance of
23 compensation to Table B.

24 Q. Are you aware of any relationship
25 empirically between duration of unemployment and

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2 compensation rates?

3 A. Not off the top of my head, no.

4 Q. Do you recall when I asked you if you
5 were familiar with the Costullcio case?

6 A. Yes.

7 Q. Are you aware that in that case the
8 trial court excluded the testimony as the
9 testifying witness who relied upon the management
10 professional and related occupations category?

11 A. No, because I'm not familiar with that
12 case.

Q. Is there a positive correlation between age and duration of unemployment?

15 MS. PRIMAVERA: Objection.

16 A. Can you restate -- repeat the question.

17 MR. BERMAN: Can you read it back,

18 please, Toni.

19 (Whereupon, last question read back.)

20 A. A correlation statistic just means
21 there's a relationship between two variables. So
22 there's a -- I don't know how your using the term
23 "positive" in front of correlation.

24 Q. Is there a relationship between those
25 two variables, age and duration of unemployment?

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2 A. Yes.

3 Q. What's the nature of that relationship?

4 A. All other things being equal on average,
5 the older the individual the longer the average
6 duration of unemployment.

7 Q. In assessing the duration of
8 unemployment, did you consider Ms. Fischman's
9 practice specialties?

10 A. At Mitsubishi?

11 Q. Yes.

12 A. So -- again, the cuts of the data from
13 the Department of Labor do not cut it that
14 granular. As granular as I can get was within
15 the four categories identified in Table B.

16 Q. Did you take into consideration the type
17 of clients she had at Mitsubishi?

18 A. In what regard?

19 Q. Did you consider the effect of practice
20 specialty upon duration of unemployment?

21 MS. PRIMAVERA: Objection.

22 A. So, again, the data from the Department
23 of Labor, unfortunately, does not go into
24 lawyer's subspecialty practices and then cuts
25 duration of unemployment at that granular level.

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2 So that data does not exist.

3 Q. Did you rely upon your experience as an
4 attorney in making assessments concerning Ms.
5 Fischman's duration of unemployment?

6 A. My experience as an attorney would be
7 employed with the general conclusions I offered
8 in my report.

9 Q. Does your report explain how your
10 experience as a lawyer leads to your conclusions?

11 MS. PRIMAVERA: Objection.

12 A. With regard to that last question, I
13 think that was explored today. We just explored
14 that before the break.

15 Q. Have you completed your response?

16 A. Yes.

17 Q. So your expert report doesn't
18 specifically identify how your legal experience
19 led to any of your conclusions, does it?

20 A. As outlined in my summary on page nine,
21 obviously, those were my conclusions, my
22 findings -- and when I say "my," that's me, Chad
23 Staller, a licensed attorney in three states with
24 20 years experience. So, obviously, when I'm
25 authoring that report, that has the inherent

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2 background that we covered in my resume and CV,
3 so those are findings that are associated with my
4 background, training and experience.

5 Q. Sir, I agree with you that your report
6 discloses that you are an attorney and an
7 experienced one.

8 What I'm asking you is whether your report
9 discloses how that experience leads to your
10 conclusions? That's not contained within your
11 report, is it?

12 A. My conclusions are based upon my review
13 of Ms. Fischman's documented job search, the
14 broad economic data we just discussed in Table B,
15 and then the more specific data relevant to her
16 MSA from February of 2017 through April of 2020,
17 so it's the blend. And then my interpretation of
18 that information as a trained lawyer and a
19 trained labor economist making those conclusions,
20 which are set forth on page nine. And it sounds
21 as if you're suggesting I have to write in every
22 sentence of my report "I, as a lawyer since 2001,
23 finds that Ms. Fischman's job search was
24 insufficient," where I just don't write a report
25 like that. That's why you have my CV.

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2 Q. Under Federal Rule of Civil Procedure
3 26(a), aren't you required to explain how you
4 your experience leads to your particular
5 conclusions?

6 MS. PRIMAVERA: Objection.

7 A. I have to take a look at 26(a).

8 Q. Haven't you just testified that you're
9 relying upon your legal experience and not just
10 your economic experience?

11 MS. PRIMAVERA: Objection.

12 A. Right. You had multiple questions
13 throughout today that were specific to Ms.
14 Fischman and several ads with regard to her bar
15 licensure or the lack thereof, where we discussed
16 that at length of why I thought those
17 opportunities would still be specific and
18 relevant to Ms. Fischman to explore.

19 Obviously, in my report that -- I didn't
20 highlight every specific opportunity. They were
21 attached as attachment one. So to answer your
22 questions that came up in today's deposition, I
23 answered those.

24 But as far as my background, training
25 and experience that's fully set forth in my

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2 curriculum vita, my methodology to reach my
3 conclusions as fully set forth in my report and
4 the basis for my conclusions are fully set forth
5 in my report.

6 Q. Let's turn to page eight of your report.

7 Mr. Staller, I direct your attention to the
8 second to last full paragraph.

9 Do you see "As shown in Table B, the median
10 duration of unemployment for categories
11 applicable to Ms. Fischman ranged from 9.6 to
12 17.0 weeks in January -- and it continues from
13 there, right; do you see that paragraph?

14 A. Yes.

15 Q. Can I please direct your attention to
16 the last full sentence, which reads: "In our
17 opinion, had Ms. Fischman conducted a reasonable
18 job search subsequent to her separation from
19 Mitsubishi, she should have found full-time
20 employment within a period ranging from six to at
21 most nine months." Do you see that sentence?

22 A. Yes.

23 Q. How did you come to the determination it
24 would take a period from six to at most nine
25 months?

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2 A. Going back to Table B -- going back to
3 Table B, the lowest, quickest data point is all
4 workers, which was 9.6 weeks, where overall in
5 the US economy in 2017 it took 9.6 weeks for the
6 50 percent to have obtained re-employment.

7 On the long end looking at the mean of
8 Table B -- the longest mean -- was 36.6 weeks, so
9 that's nine months.

10 So what's included in that would be the
11 manufacturing industry, which Mitsubishi would be
12 part of and her work related to Mitsubishi as
13 corporate counsel would be in there. And then
14 within management professional and related
15 occupations are also subsumed within that range.

16 So while the data points are from the
17 broader categories, they are providing the two
18 end points from which the more specific
19 categories relevant to Ms. Fischman's work
20 experience are contained. So that's where that
21 time period is coming from.

22 Q. How can you make an estimation on how
23 long it would take her to find employment based
24 only upon the mean or a median for a larger
25 group?

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2 MS. PRIMAVERA: Objection.

3 A. That's being the most generous, that
4 women or individuals within her more specific
5 occupation or trade have been 26.7 or 30.4 weeks.
6 By suggesting it would take up to nine months,
7 going based upon the broad age and gender
8 category is being conservative.

9 Q. None of these categories comprise
10 individuals with Ms. Fischman's same
11 characteristics for employment purposes, right,
12 you're comparing her to a larger broader group of
13 individuals from various divers backgrounds,
14 correct?

15 MS. PRIMAVERA: Objection.

16 A. No. So the manufacturing category would
17 contain professionals working in the
18 manufacturing industry, management professional
19 related occupations -- by definition,
20 professionals would be lawyers as defined in the
21 professional trades. So Ms. Fischman is a lawyer
22 would fit into that category. So those are the
23 most relevant categories --

24 Q. Sir, I understand that she is within
25 each of those categories you identified. But in

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2 addition, there are many other types of employees
3 within each of those categories, are there not?

4 MS. PRIMAVERA: Objection.

5 A. There will other occupations, sure.
6 Unfortunately, the Department of Labor doesn't
7 have the resources to only capture the
8 unemployment data for corporate counsel or acting
9 general counsel or acting -- or sorry -- chief
10 compliance officer from a Fortune 100 company.
11 That data just does not exist at that granular
12 level, which is why we -- that's why the
13 Department of Labor categorizes it based upon
14 broader classification of similar situated
15 individuals to provide benchmarks of what we
16 expect based upon the categories identified in
17 Table B.

18 Q. Okay. Without that data how can you
19 reliably determine how long it would take
20 somebody to find employment?

21 MS. PRIMAVERA: Objection.

22 A. If you look at the overall US economy,
23 all workers. So, again, what we know as a labor
24 economist "all workers," that will capture highly
25 skilled and unskilled individuals. So unskilled

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2 individuals as we know from labor economic theory
3 has greater demand of jobs, meaning, more volume.
4 Those individuals that are filing for the retail
5 jobs, the restaurant jobs, general manufacturing
6 jobs. So there's more individuals that have less
7 academic training than Ms. Fischman in the entire
8 population. That population took between nine to
9 twenty-three weeks. Then we cut it based upon
10 age of all vocations -- but as we discussed, Ms.
11 Fischman, while in her forties, is not considered
12 older by general standards in the economy. That
13 population between 45 and 54 put 17.36 weeks,
14 which is the longest duration you see in that
15 chart. And as we discussed, there is a
16 correlation between age and average duration.
17 Regardless of vocation -- so people who are
18 unskilled that are older have the longest time to
19 find re-employment, that's what that category
20 represents.

21 Now we have the benefit of applying the
22 attributes to the vocation of Ms. Fischman,
23 management, professional related occupations.
24 Those individuals are now based upon higher
25 education, highly skilled jobs. We know from

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2 that population that it's taking 13.7, as a
3 medium, to 30.4. Then we refine the search -- if
4 you don't want to go off her trade or her
5 vocation as a trained lawyer practicing law, you
6 want to go off the industry in which she worked
7 since 2008 within the manufacturing world, we
8 know what that population looks like. So the
9 data has been cut based upon the criteria for Ms.
10 Fischman. So this has relevance to Ms. Fischman
11 either by her gender and age, based upon her
12 general participation in the US labor force or
13 more specifically based on her work experience as
14 a lawyer or as an individual working in the
15 manufacturing setting in a professional capacity.

16 So the last two categories may be more
17 specific but the other categories have relevance
18 to Ms. Fischman. And these provide proxies,
19 which the Department of Labor uses all the time,
20 and we see discussed in the news all the time
21 especially during the COVID world that these
22 provide guide posts to what we expect individuals
23 similar to Ms. Fischman to have found
24 reemployment by.

25 Q. Have you concluded your response?

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2 A. I have, Mr. Berman.

3 MS. PRIMAVERA: Sorry to interrupt. How
4 much time have we gone today, Ms. Reporter?

5 (Whereupon, an off-the-record discussion
6 was held.)

7 MR. BERMAN: I think we're getting to
8 the end of this. I just want to ask a few
9 more questions.

10 Q. Are you familiar with concept of a
11 confidence interval, Mr. Staller?

12 A. Yes.

13 Q. Have you identified any confidence
14 interval in connection with your estimate of how
15 long it should have taken Ms. Fischman to find
16 re-employment?

17 A. Well, by a confidence interval and what
18 we know from Table Data B and the date captured
19 by the Department of Labor, if we look at the
20 lowest percentage but based upon vocation that
21 67.9 percent, so we know of the entire population
22 of individuals that are identified in management,
23 professional and related occupations, within a
24 half year, 26 weeks, 68 percent of those
25 individuals found re-employment.

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2 If we look with regard to her industry
3 training -- I shouldn't say "training" but
4 industry based experience -- again, not a
5 confidence interval -- I imagine how you're using
6 that term -- there's 74 percent of the population
7 that were unemployed were re-employed within a
8 half year.

9 So by statistical standards, a
10 majority -- an overwhelming majority within those
11 two criteria, found work within, at most, half
12 year.

13 There's nothing to suggest that in Ms.
14 Fischman's background, training or experience she
15 lacked any competency or ability in her skills
16 that would prevent her from being an outlier for
17 the minority of that population.

18 Q. Have you completed your response?

19 A. I have, Mr. Berman.

20 Q. Have you made any calculation of the
21 predictive power of your estimate of how long it
22 should have taken Ms. Fischman to find
23 re-employment.

24 A. I don't understand how you're using the
25 term "predictive power."

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2 Q. Have you made any mathematical
3 determination concerning the degree to which your
4 estimate accurately predicts results?

5 A. That's an impossible -- it's a question
6 with an impossible outcome. Ms. Fischman --
7 obviously, she hasn't obtained employment except
8 for working with her mother in the real estate
9 field. By all accounts from her supplied data,
10 she stopped seeking work and my opinion goes
11 towards the opportunities that existed for Ms.
12 Fischman in the New York Metro area for lawyer
13 positions -- legal positions and from all
14 accounts from the published data we have
15 available from the cusp that would be most
16 relevant to Ms. Fischman. The empirical data
17 concludes that over three -- or just at three
18 quarters of that population obtained
19 re-employment at 27 weeks. On the low end, two
20 thirds of the population of similar situated
21 co-force found re-employment within 27 weeks. So
22 the predictive power, you can't test. That's
23 based upon what has transacted and of a similar
24 situated co-force, we know what transacted and
25 how they found re-employment within a specific

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2 time period.

3 Q. Have you completed your response?

4 A. I have.

5 Q. Do I understand correctly that when you
6 made an estimate of the time that it would take
7 for all workers to find re-employment, right --
8 first category here, correct?

9 A. Yes.

10 Q. Do I understanding correctly that when
11 you make that estimate, you cannot -- you can
12 look back later on your estimate and see whether
13 it had any predictive power?

14 MR. FORTINSKY: Objection.

15 Q. Do understand my question?

16 A. (No verbal response.)

17 Q. If you take a population -- the
18 population of this category, right -- and you
19 make an estimate that it will take between
20 23.7 -- it will take on average -- or I guess
21 you're using "mean" here, that's the average,
22 correct?

23 A. There's both there, Mr. Berman.

24 Q. You get the mean and the median, right?

25 A. That's right. There's both there.

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2 Q. So is there any statistical analysis of
3 the predictive power of an estimate of this type
4 on predicting future outcome?

5 MR. FORTINSKY: Objection.

6 A. Rephrase the question. You used
7 "predictive" three times one sentence.

8 Q. When you use data of this type to make
9 an estimate, how long it would take a population
10 to find re-employment, in the real world can you
11 then later go and look at that population and
12 identify how many of them actually found
13 re-employment in the estimated time period?

14 MS. PRIMAVERA: Objection.

15 A. I'm just -- maybe I'm confused by your
16 question. I probably can't answer it -- but
17 that's what the mean and median are showing. In
18 the far column on the right-hand side, that's the
19 predictive power, of all individuals that had
20 separated from employment in January of 2017,
21 they found re-employment within 9.6 weeks in the
22 first row -- just to answer your question -- and
23 9.6 weeks or 23.7 weeks. So I'm confused by when
24 you say "predictive power" because this is
25 recorded -- we're not estimating it -- this is

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2 what transpired. We're not going to estimate
3 what that population did, we're reporting what
4 that population did.

5 Q. This is historical data, correct?

6 MS. PRIMAVERA: Objection.

7 A. Correct, this is reported data in that
8 time period. So we're looking back now in the
9 period of January of 2017 what actually
10 transpired. I don't see the relevance of
11 prediction.

12 Q. Let me rephrase the question.

13 Has there been any statistical analysis of
14 whether the historical data predicts future
15 results?

16 A. The duration of unemployment's dynamics,
17 it's changing months and every year. So I don't
18 understand that question.

19 Q. So does that mean that the duration --
20 the historical duration of unemployment does not
21 predict how long it would take someone to find
22 re-employment in the future?

23 MS. PRIMAVERA: Objection.

24 A. If I were to use this data as applied to
25 Ms. Fischman or to anybody as of July or August

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2 1st, 2021, I would not use the January dataset.

3 But fortunately for us, we know Ms. Fischman

4 separated from employment in January of 2017 --

5 February of 2017 and we had the benefit of

6 knowing what actually transpired from similarly

7 situated individuals based upon four cuts of

8 Department of Labor data that records -- not

9 predicts -- but records similar to Ms. Fischman

10 when they lost their jobs in that time period.

11 And to Ms. Fischman what do those individuals

12 actually experience in the period of unemployment

13 and what percent of that population got

14 re-employed -- and that's what that far right

15 hand column identifies. So we don't need to

16 predict.

17 Ms. Fischman was part of that population

18 in February of 2017 and her could work

19 experienced this immediate and median.

20 Obviously, with Ms. Fischman not finding

21 employment, she would be outside the mean and

22 median periods. But as that central point of

23 central tendency represents, half received

24 employment within those time periods.

25 Q. Okay. So this data for the duration of

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2 unemployment in January of 2017, is that looking
3 at the results from 2017 onward or is that
4 looking for results up to 2017?

5 A. (No verbal response.)

6 Q. Does that make sense?

7 A. Yes. When did they separate?

8 Q. Yes. Like is this chart looking at how
9 long it took people to find employment taken at a
10 point in time in January of 2017 or is this
11 looking at unemployment that started in
12 January of 2017 and looking at it at some later
13 date?

14 A. It's looking at people that separated in
15 January of 2017 and what it took those
16 individuals.

17 Q. So when is it measured to -- if they
18 separated in January of 2017, when it is measured
19 to? When does it stop tracking it?

20 A. So with regard to the mean -- well,
21 27 weeks would be the second week of July -- or
22 actually it would be through January -- it would
23 be through January so it would be through the
24 first week of August of that respective year,
25 '17.

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2 They stopped tracking because the
3 mean -- the mean gets pulled out by the details,
4 quick hires and no hires. After a certain time
5 point we stop tracking from the mean. I forget,
6 it's like 100 weeks -- I forget the period.

7 Q. 100 weeks is a little less than two
8 years, right, that would be until December of
9 2019, is that correct?

10 A. 100 weeks with regard to the case
11 specific for Ms. Fischman, yes.

12 Q. 100 weeks from January of 2017 is
13 approximately December of 2019, do we agree?

14 A. Approximately, yes. As an
15 approximation, yes.

16 Q. If you were looking at this table in
17 December of 2019, would there be any material
18 difference between what it says now and what it
19 says in December of 2019?

20 A. Not for the January of 2017 data because
21 that's already established, no.

22 Q. That's my question. Thank you. So if
23 you were looking at this table in December of
24 2019, would that enable to you to make a
25 prediction in December of 2019 about how long you

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2 expect it to take someone in the manufacturing
3 category to obtain re-employment if they were
4 separated in December of 2019?

5 A. No. You would use the December -- you
6 would have to -- the December -- if they were
7 separated in December of '19, you would not use
8 the January of 2017 data. The data from the
9 January of 2017 dataset would be the stragglers
10 that are --

11 Q. So if you were looking at the January of
12 2017 data in Table B -- if you were looking at
13 that information in December of 2019, is it
14 correct to say that you would not be able to use
15 that data to predict how long it would take
16 someone who was separated from employment in
17 December of 2019, you wouldn't be able to use
18 that to figure out an estimate of how long it
19 would take them to find reemployment; is that
20 correct?

21 A. I'm confused by your question.

22 Q. Okay. If you have -- if it was -- if
23 you were looking at Table B in December of
24 2019 -- I think you told me the data would be
25 substantially the same as it is now, correct?

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2 A. Right, it would be the exact same data
3 because this data been stagnant since January of
4 '17.

5 Q. So it's stagnant data as of the point in
6 time of December of 2019, correct?

7 A. 2017.

8 Q. The 2017 -- the January of 2017 data is
9 stagnant as of December of 2019, isn't it?

10 A. Yes. I understand your question now.
11 Correct.

12 Q. We have a snapshot in time of
13 December of 2019 that has this data in it that is
14 presented in Table B, right?

15 A. If I looked up the duration of
16 unemployment as of January of 2017, two years ago
17 in, January of 2019, you would get the status
18 set.

19 Q. I want to stick with December of 2019,
20 if that's okay. If you looked up this data in
21 December of 2019, it would say the same thing it
22 says now, right?

23 A. The data published in Table B, yes.

24 Q. If you had the data as published in
25 Table B, in December of 2019 would you be able to

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2 use that data to make any prediction about how
3 long you would expect it to take someone in the
4 manufacturing category who was severed from their
5 employment in December of 2019 to find
6 re-employment?

7 A. You can use this dataset in your
8 hypothetical but there would be more updated
9 data -- more contemporaneous to that separation.
10 In your hypothetical, if this person separated in
11 the manufacturing industry in December of '19,
12 you would not use the data from Table B.

13 Q. So you wouldn't be able to use the --

14 A. I wasn't done, Mr. Berman.

15 Q. Okay.

16 A. You would be using -- I'm not sure how
17 you're using it or why you're using because your
18 hypothetical is not complete -- but if you're
19 just looking at the data itself, there would be
20 data contemporaneous to that person's separation
21 in December of '19 that you would not have to
22 rely upon the January of 2017 data published in
23 Table B if we were trying to explore how long
24 that newly separated person to have unemployment
25 for. There would be data surrounding that

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2 separation in a time period context.

3 Q. Have you completed your response?

4 A. I have now, Mr. Berman.

5 Q. In making your estimate of how long you

6 would have expected Ms. Fischman to take to find

7 re-employment, did you consider the impact of her

8 job references?

9 A. Not specifically, no.

10 Q. Do you know whether there's a

11 relationship between the duration of unemployment

12 and your job references as an applicant?

13 A. I don't think one can draw a direct

14 correlation. I think that will go into multiple

15 factors and attributes and the dynamics of the

16 job applicant, job posting, the presentation of

17 the person, their experience and the job they're

18 seeking. I don't think it's as simple as saying

19 one to one.

20 Q. That's fair. Is it fair to say that one

21 of the factors to be considered within the

22 duration of unemployment would be the quality and

23 quantity of the person's references?

24 MS. PRIMAVERA: Objection.

25 A. I can't say that the references or lack

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2 thereof draws a direct relationship to the
3 duration of unemployment, no. It's much more
4 dynamic than what another person says about them.

5 Q. You consider the number of references
6 Ms. Fischman had in estimating how long you would
7 expect her to find re-employment, correct?

8 A. I did not consider the number of
9 references, no.

10 Q. Did you consider whether she had a
11 reference available from Mitsubishi in connection
12 with your determination of her duration of
13 unemployment?

14 MS. PRIMAVERA: Objection.

15 A. I don't know about any references she
16 may or may not have had from Mitsubishi so it
17 wasn't considered.

18 Q. In connection with the job listings we
19 saw in the forensic job stats database, do you
20 have any information about the market share of
21 the different job boards that are referenced in
22 that dataset?

23 MS. PRIMAVERA: Objection.

24 A. I'm not sure what market share you're
25 referring to.

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2 Q. Well, there are different job boards
3 listed in the job postings within the dataset you
4 looked at, right?

5 A. Yes.

6 Q. There are many different job sites
7 listed in those job postings, correct?

8 A. Yes.

9 Q. Do you have any information concerning
10 the market share that those various job search
11 sites have in the marketplace?

12 A. No, not off the top of my head.

13 Q. Is there any field within the discipline
14 of forensic economics that considers the market
15 share of job search boards?

16 A. Not that I'm aware of.

17 Q. You testified earlier you have some
18 level of knowledge concerning a plaintiff's duty
19 to mitigate, correct?

20 A. Yes.

21 Q. Are you aware what the doctrine of
22 lowering your sites?

23 A. Generally.

24 Q. Did you complete your response?

25 A. I did, yes.

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2 Q. Did you consider that doctrine in your
3 assessment of the mitigation of plaintiff's
4 damages?

5 MR. FORTINSKY: Objection to form.

6 A. To the extent she just transitioned her
7 career into real estate.

8 Q. Other than that, did you factor in the
9 doctrine of lowering your sites?

10 A. Typically my experience of the doctrine
11 of lowering sites where it relates to the
12 residual earnings level of an individual that
13 they can't find the same level of pay, lower
14 their sites with regard to compensation. I'm not
15 familiar with it with regard to job search
16 activity, with regard to the efforts. But as far
17 my experience with it is with regard to the
18 residual earning ability of a person.

19 Q. Are you familiar with O*NET?

20 A. Yes.

21 Q. Do you consult O*NET in connection with
22 this assignment?

23 A. No. Again, my experience with O*NET is
24 with regard to the specific level of earnings,
25 not so much of opportunities or employment

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2 opportunities.

3 Q. Okay. Is it fair to describe O*NET as a
4 content model?

5 MS. PRIMAVERA: Objection.

6 A. I'm not sure how you're using content
7 model. It's database. I don't -- most of
8 databases are content.

9 Q. Do you know whether the O*NET database
10 incorporates knowledge, skills and abilities?

11 MS. PRIMAVERA: Objection.

12 A. I didn't use it in this case so I didn't
13 look at it.

14 Q. Did you conduct any analysis of the
15 knowledge, skills and abilities applicable to Ms.
16 Fischman's positions that she was separated from?

17 THE WITNESS: Can you repeat the
18 question.

19 (Whereupon, last question read back.)

20 A. Based upon her resume and answer to
21 interrogatories, I was aware of her work at
22 Mitsubishi. I'm not sure how else you're using
23 it in that question.

24 Q. Did make -- are you familiar with the
25 concept of transportability of skills?

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2 A. Yes.

3 Q. Did you make any analysis of the
4 transportability of the knowledge, skills and
5 abilities of Ms. Fischman's former jobs?

6 A. Yes, as outlined in her CV and that's I
7 think exactly what shows in page seven of my
8 report.

9 Q. That's what you would look for in an
10 analysis of knowledge, skills and abilities?

11 A. Well, as earlier testified to, I'm not a
12 vocational expert. But with regard to your
13 question, when you say transportability, I mean,
14 typically it's referred to as transferrable skill
15 set. You see in her resume all of her background
16 and experience with regard to providing legal
17 counsel and advice on various legal matters at
18 either corporations or in private firms and
19 that's what the graph represents on page seven of
20 my report. When you search, you control for some
21 of her experience -- I'm not suggesting Ms.
22 Fischman -- because that would outside my area of
23 expertise -- that she should become a financial
24 adviser or she should become a manufacturing
25 plant supervisor, I'm taking what she identified

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2 of her resume, key words, key terms that she
3 identified in her resume and using that through
4 the forensic job stats dataset to define relevant
5 and applicable job she could have sought based
6 upon what identified by Ms. Fischman. I'm not
7 transferring her into a different industry or
8 occupation.

9 Q. So you're not expressing any opinions
10 about the similarity of Ms. Fischman's job to any
11 other jobs, correct?

12 MS. PRIMAVERA: Objection.

13 A. Correct. I think this was discussed
14 around your questioning of science and science
15 and more science. But similarity, correct.

16 What I've identified here for Ms.
17 Fischman and what I've opined to is the number of
18 opportunities in the legal market that existed,
19 whether similar to Mitsubishi or Raytheon Company
20 or what she did in private practice, I'm not
21 trying to overlap those. It's a key term
22 analysis based upon what she has identified in
23 her key bullet points on her three page resume
24 with regard to key words that are used to filter
25 out and identify the most relevant jobs in the

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2 New York Metro area for lawyers from February 1,
3 2017 through April of 2020.

4 Q. Okay. So when you used the term
5 "similarly situated" before, you weren't
6 referring to assessing overlap between jobs,
7 right?

8 A. Correct. My role here as a labor
9 economist is identify the labor market that
10 existed and the job opportunities that existed.
11 I'm not here to say job on page 300 had nine of
12 the ten attributes that she had at Mitsubishi as
13 acting general counsel or chief compliance
14 officer. My role here is to say there are other
15 jobs that could have been pursued and
16 investigated by Ms. Fischman after her date of
17 separation through the current date to show are
18 her 106 contacts reasonable or unreasonable based
19 upon what the marketplace -- it's a benchmark
20 study that indicates were her efforts based upon
21 her supplied documentation exhausted and complete
22 or was there more work and more of the labor
23 market she could have pursued as far as legal
24 opportunities.

25 Q. In making those determinations, did you

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2 consider the length of time that any of these
3 jobs were posted?
4 A. No. My experience -- these jobs tend to
5 post per 90 days and they may be reposted and
6 that's why I identify them as opportunities. To
7 the extent that an employer would repost it, it
8 was still an opportunity that if Ms. Fischman
9 didn't see it in February of '18, she could have
10 applied for it in March of '18. So I identified
11 them as opportunities.

12 Q. Did you take into account that a number
13 of these don't list the poster, they say poster
14 not listed, right?

15 A. That's true.

16 Q. Did you factor that into the analysis?

17 A. No. That would be an opportunity for
18 Ms. Fischman to explore. Because it's not posted
19 doesn't mean it wouldn't be a relevant employer
20 for her to consider.

21 Q. Did you factor in whether Ms. Fischman
22 had enough experience for each of the jobs
23 posted?

24 MR. BERMAN: I hear somebody in the
25 background.

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2 Q. Did you take into account Ms. Fischman's
3 experience in connection with the jobs that were
4 posted, whether she had enough experience?

5 THE WITNESS: I think that prior voice
6 was Mr. Berman's AI.

7 MR. BERMAN: I've been accused AI
8 before, I won't deny that.

9 Q. Did you hear my question?

10 A. Just repeat it, please.

11 Q. Did you take into account whether
12 plaintiff had enough experience to qualify for
13 the jobs that were posted?

14 A. The criteria -- if you're using it to
15 say experience not based upon a threshold number
16 of years, obviously, Ms. Fischman has been a
17 licensed attorney since 1996. So it's experience
18 or the relevance would be based upon the search
19 terms that's identified on page seven.

20 Q. Did you take into account whether
21 plaintiff had too much experience for any of the
22 jobs listed?

23 A. No. Even if they wanted an entry level
24 attorney -- again, this is called the hidden job
25 market where it's worth meeting that employer --

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2 maybe this job wouldn't be right but they would
3 accept her resume or put it on hold for when the
4 right position comes up or they would place
5 knowing she's good a candidate that they don't
6 want to pass up. So I do not exclude just if she
7 was over qualified. Again, it's about contacts
8 with employers, getting out as many opportunities
9 as possible. You have to swing the bat to get a
10 home run. These are opportunities for her to
11 swing the bat.

12 THE WITNESS: We're at 4:10. We're well
13 over four hours now, the time I reserved for
14 the deposition.

15 If you have a couple more minutes, I'm
16 happy to do that but otherwise --

17 MR. BERMAN: I'm just about finished
18 here. I appreciate you indulging me. I do
19 want to wrap this up and I think we're just
20 about there.

21 Q. Just to clarify, you also considered
22 temporary assignment jobs, right?

23 A. Yes, I did. Again, get her foot in the
24 door if that was an appropriate opportunity to
25 explore.

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2 Q. And you also considered jobs that were
3 paying significantly less than what she was
4 making in her prior employment, correct?

5 MS. PRIMAVERA: Objection.

6 A. The posted -- most jobs don't have
7 dollars posted, there's some that do. Right, I
8 believe, some of them may be lower than what her
9 annual learning were. Again, I don't have her
10 tax returns. But, yes, as far as -- some
11 opportunities may have had lower hourly rate than
12 what Ms. Fischman was making. But, again, an
13 opportunity she should have explored.

14 Q. You included, for example, document
15 review assignments, right?

16 MS. PRIMAVERA: Objection.

17 A. Yes.

18 Q. Those are typically engagements that pay
19 lower hourly rates than anything that compares to
20 a general counsel rate, right?

21 MS. PRIMAVERA: Objection.

22 MR. BERMAN: I knocked the camera over.

23 Sorry.

24 A. Generally, yes. I can't say in every
25 matter, it's going to depend and that's the whole

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2 point of applying, to explore that opportunity
3 and see what it pays and what other opportunities
4 for that firm will be available for some of the
5 credentials for Ms. Fischman.

6 Q. This analysis is within the context of
7 her duty to mitigate, correct?

8 MS. PRIMAVERA: Objection.

9 A. I don't understand -- my report is a
10 mitigation report so I don't understand that
11 question as it may be something different.

12 Q. I'll try to clarify it and I think we're
13 probably done.

14 You mentioned before that you generally
15 aware of the duty to mitigate, right?

16 A. Yes.

17 Q. Do you know whether a terminated
18 employee's duty to mitigate includes applying to
19 jobs that pay significantly less than the job
20 they have just been severed from?

21 A. So that gets into that lower site
22 doctrine. That after a period of time if you're
23 not successful in your exhaustive search for a
24 certain occupation or job at certain earnings
25 level, one should turn to a lower site.

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2 I don't think Ms. Fischman really got to
3 that level, to be honest, to the extent that what
4 I'm establishing here showing that there were
5 multiple opportunities to the extent that some
6 have lower jobs on a possible per hourly basis or
7 per annum basis. Those are still contacts Ms.
8 Fischman would want to have pursued, to have
9 those meetings and discussions with the employer.

10 Q. So just to make sure I understand, isn't
11 it correct that you included jobs or job postings
12 for positions that paid substantially less than
13 Ms. Fischman was earning with without removing
14 any based upon the time period of those posting,
15 right, so you included lower paying jobs from
16 January 30th onward, correct?

17 MS. PRIMAVERA: Objection.

18 A. So, again, I haven't seen Ms. Fischman's
19 tax returns. And with regard to lower hourly
20 rates, some were per diem jobs that may pay than
21 what she made. It doesn't mean it would have
22 been a relevant job or she would not demanded a
23 higher hourly rate. What's listed there is not
24 the number that's necessarily settled upon in
25 reaching an employment agreement with that

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2 subsequent employer. That's the whole reason of
3 meeting, showing your credentials and then
4 negotiating a fair salary.

5 Q. Isn't that process entirely speculative?
6 For example, if there is a document review
7 position posted, the employer is not going to
8 negotiate to hire you as general counsel, are
9 they?

10 MS. PRIMAVERA: Objection.

11 Q. That's speculation, right? It could
12 happen but it's probably not going to happen,
13 right?

14 MS. PRIMAVERA: Objection.

15 A. Right. I'm not suggesting she become
16 general counsel for that organization. Can she
17 become a senior associate or a senior team leader
18 on that project based upon wide breath of
19 experience and command more than the hourly rate
20 identified there, I think that's completely
21 possible and not speculation.

22 Ms. Fischman has a fantastic resume with
23 loads of experience and would help many employers
24 and many legal situations. So the fact that you
25 might apply to a job that says temporary, I don't

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2 think that's prohibitive of anything.
3 Q. Isn't that presuming that there's a
4 different job available than the one she applied
5 to?

6 MS. PRIMAVERA: Objection.

7 Q. I mean, it's not the job posted, right?
8 If the job posted is a document review attorney,
9 you're saying, I guess, it's within the realm of
10 possibility that she can negotiate for some other
11 job. But doesn't that presume there's an
12 opening?

13 A. No, it could mean that she takes the
14 document review job for the short term based upon
15 the conversation she could have had with that
16 employer but she did not with that employer but
17 could have pursued and got her foot in the door
18 and did the work on the specific ad she could be
19 qualified for it. Again, we don't know if it's
20 exactly a lower rate -- you're suggesting it
21 is but we don't know -- and then she could have
22 gone to other opportunities after demonstrating
23 her highly trained skill set she's acquired since
24 1996.

25 MR. BERMAN: I have no further questions

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2 for you at this time, Mr. Staller.

3 I want to thank you for your time. I

4 tender the witness.

5 MS. PRIMAVERA: I have no questions for
6 the witness.

7 MR. FORTINSKY: I have no questions for
8 the witness.

9 THE REPORTER: Would anyone like to
10 order a copy of the transcript?

11 MS. PRIMAVERA: Copy, please.

12 MR. FORTINSKY: No copy.

13 (Whereupon, the examination of this
14 witness was concluded at 4:15 p.m.)

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2 A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK)
5 COUNTY OF) : ss

6

7 I, CHAD STALLER, hereby certify that I
8 have read the transcript of my testimony taken
9 under oath in my deposition of July 30, 2021,
10 that the transcript is a true, complete and
11 correct record of my testimony, and that the
12 answers on the record as given by me are true and
13 correct.

14

15

16

17

CHAD STALLER

18

19

Signed and subscribed to before
20 me, this day
of , 2021.

21

22

23

24 Notary Public, State of New York

25

1

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5

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11

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2 C E R T I F I C A T E

3

4 I, TONI MUSACCHIA, a Notary Public in and
5 for the State of New York, do hereby certify:

6 THAT the witness whose deposition is
7 hereinbefore set forth, was duly sworn by me and
8 THAT the within transcript is a true
9 record of the testimony given by such witness.

10 I further certify that I am not related,
11 either by blood or marriage; to any of the
12 parties to this action; and

13 THAT I am in no way interested in the
14 outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 30th day of August, 2021.

17

18



19

TONI MUSACCHIA

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